

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SILVER ARCH CAPITAL PARTNERS, LLC., a New Jersey limited liability company; and DOES 1-50, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

MCKINNEY CAPITAL & ADVISORY, LLC., a California limited liability company.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/04/2019 at 09:48:14 PM

Clerk of the Superior Court
By Jacqueline J. Walters, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of San Diego County
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2019-00052881-CU-FR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Craig DuFord, DuFord Law, LLP, 3611 Fifth Avenue, San Diego, CA 92103; Ph. 619-546-4291.

DATE: 10/07/2019
(Fecha)

Clerk, by J. Walters, Deputy
(Secretario) J. Walters (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Silver Arch Capital Partners, LLC
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig DuFord, SBN 305823/ Julia Zold SBN 324847 DuFord Law, LLP 3611 Fifth Avenue San Diego, CA 92103 TELEPHONE NO.: (619) 546-4291 FAX NO.: (619) 354-2449 ATTORNEY FOR (Name): McKinney Capital and Advisory Group, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/04/2019 at 09:48:14 PM Clerk of the Superior Court By Jacqueline J. Walters, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, 92103 BRANCH NAME: Central Division	CASE NUMBER: 37-2019-00052881-CU-FR-CTL
CASE NAME: McKinney Capital and Advisory Group, LLC v. Silver Arch Capital Partners, LLC	JUDGE: Judge Kenneth J Medel DEPT:

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (46)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input checked="" type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/04/19
 Julia Zold

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 CRAIG W. DUFORD, State Bar No. 305823
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10 Attorneys for Plaintiff

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Jacqueline J. Walters, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 MCKINNEY CAPITAL &
12 ADVISORY, LLC., a California
13 limited liability company,

14 Plaintiff,

15 vs.

16 SILVER ARCH CAPITAL
17 PARTNERS, LLC., a New Jersey
18 limited liability company; and DOES
19 1-50, inclusive;

20 Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

COMPLAINT FOR

1. **ACTUAL FRAUD AND DECEIT BASED
ON INTENTIONAL
MISREPRESENTATION;**
2. **NEGLIGENT MISREPRESENTATION;**
3. **BREACH OF WRITTEN CONTRACT;
AND**
4. **BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING.**

DEMAND FOR JURY TRIAL

21 Plaintiff alleges:

22 1. Plaintiff, MCKINNEY CAPITAL & ADVISORY, LLC., ("PLAINTIFF"), is a
23 California limited liability company and is now, and at all times mentioned in this Complaint,
24 had a principal place of business in San Diego County, California.

25 2. Defendants, SILVER ARCH CAPITAL PARTNERS, LLC., ("SILVERARCH")
26 is a New Jersey limited liability company and is now, and at all times mentioned in this Complaint,
27 doing business in the state of California.

COMPLAINT FOR DAMAGES

1 3. DOE 1 through DOE 50, inclusive, are fictitious names of defendants sued herein
2 under the provisions of Code Civ. Proc., § 474. Plaintiff is informed and believes and thereon
3 alleges that each of the fictitiously named defendants is responsible in some manner for the
4 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
5 caused by such defendants.

6 4. Plaintiff is informed and believes and thereon alleges, that each of the Defendants
7 herein was, at all times relevant to this action, the agent, employee, representing partner, or joint
8 venture of the remaining Defendants and was acting within the course and scope of that
9 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
10 defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the
11 remaining defendants.

12 **JURISDICTION AND VENUE**

13 5. This Court has jurisdiction over this action pursuant to California Code of Civil
14 Procedure § 410.10

15 6. Venue is proper because the facts and circumstances giving rise to the allegations
16 in this Complaint occurred in San Diego County.

17 7. The allegations of this Complaint stated on information and belief are likely to
18 have evidentiary support after a reasonable opportunity for further investigation or discovery.

19 **FACTUAL BACKGROUND**

20 8. The PLAINTIFF reached out to SILVERARCH to refinance a loan on the real
21 property located at 414 Lesser Street, Oakland, CA 94601 ("LESSER STREET").

22 9. On or around, March 1, 2019, SILVERARCH provided the PLAINTIFF with a
23 Term Sheet. (Exhibit A.)

24 10. The Term Sheet included material terms of the refinancing loan.

25 11. On or around March 6, 2019, the PLAINTIFF, signed the Term Sheet and wired
26 SILVERARCH \$40,000.00, thereby agreeing to the material terms of the loan as described in the
27 Term Sheet.

1 12. Specifically, the Term Sheet was for a \$6,000,000.00 interest-only loan for a term
2 of two years, with a closing date of April 4, 2019.

3 13. The Term Sheet, required the PLAINTIFF to make a "Due Diligence Deposit in
4 the amount of \$40,000.00." The \$40,000.00 was to be returned to the PLAINTIFF in the event
5 the Lender, SILVERARCH, fails to perform its obligations as described in the Term Sheet.

6 14. The Disclosure section of the Term Sheet states that "[t]his Term Sheet shall be
7 non-binding with the exception of the Break-up Fee, indemnification against expenses, and Due
8 Diligence charges above."

9 15. Consequently, the Term Sheet's clauses concerning the Break-up Fee,
10 indemnification against expenses, and Due Diligence charges became binding on the Parties
11 when they signed the sheet. Further, the Commitment Letter made the entire Term Sheet binding
12 on the parties as the commitment was "based on the term's conditions, and requirements of the
13 Term Sheet."

14 16. On March 26, 2019, SILVERARCH provided a commitment letter to PLAINTIFF
15 stating that SILVERARCH would provide a loan in the amount of \$6,000,000 based on the terms
16 and conditions included in the Term Sheet dated March 1, 2019. (Exhibit B.)

17 17. PLAINTIFF acknowledged the Commitment Letter on or about March 26, 2019,
18 and returned it to SILVERARCH, thereby making the terms listed in the Term Sheet binding on
19 the parties.

20 18. PLAINTIFF relied on the terms provided by SILVERARCH in the Term Sheet
21 when they signed the Commitment Letter.

22 19. On or around March 27, 2019, SILVERARCH sent the PLAINTIFF a document
23 which they stated was the Loan Application regarding the LESSER STREET refinancing loan.
24 (Exhibit C.)

25 20. The Loan Application sent to the PLAINTIFF was not addressed to any of their
26 employees and contained different and additional material terms that were not included in the
27 Term Sheet.

28 21. The Loan Application included stringent, non-market, cash management
provisions that were neither included in the Term Sheet, nor mentioned by SILVERARCH in
any communications between them and the PLAINTIFF occurring before to March 26, 2019.

1 22. The Loan application moved the closing date from April 4, 2019, which was
2 listed under the Term Sheet, to April 20, 2019.

3 23. Further, the Term Sheet provided that "Borrower agrees to pay Lender a Break-
4 up fee of ½ % of the Loan amount," where the Loan Application provided a Break-up Fee of
5 "1% of the Loan Amount" (Exhibit A & C.)

6 24. A Break-up Fee of "½ %" of the \$6,000,000.00 loan amount equates to
7 \$30,000.00.

8 25. Conversely, a Break-up Fee of "1 %" of the \$6,000,000.00 loan amount equates
9 to \$60,000.00.

10 26. The \$30,000.00 increase in the Break-up Fee constitutes a material change to the
11 Term Sheet that was signed by the Plaintiff.

12 27. SILVERARCH also added a fee for servicer cost to the Loan Application.(Exhibit
13 C.)

14 28. The signed Term Sheet did not contain any section mentioning the servicer fee
15 that the Plaintiff would be obligated to pay.

16 29. The servicer cost included in the Loan Application is material to the PLAINTIFF
17 as they are required to pay them in an amount not to exceed five basis points, equal to \$30,000.00.

18 30. The changes made to the Loan Application, described above, are material in that
19 the PLAINTIFF would not have signed the Term Sheet or Loan Commitment had they been
20 disclosed to the PLAINTIFF before signing.

21 31. Thus, any changes made by SILVERARCH as to those terms agreed upon in the
22 Term Sheet and Commitment Letter constitute a failure of SILVERARCH to meet their duties
23 and obligations.

24 32. On or around April 2, 2019, SILVERARCH informed PLAINTIFF that they
25 would not be able to remove the materially different and additional terms from the Loan
26 Application.

27 33. SILVERARCH's refusal to remove the different and additional material terms
28 constitutes a breach of the Term Sheet dated March 1, 2019, as well as a breach of the
Commitment Letter.

1 34. After SILVERARCH's breach of the Term Sheet and Commitment Letter,
2 PLAINTIFF refused to sign the Loan Application and requested that their Due Diligence Fee of
3 \$40,000.00 be returned to them as described under the Due Diligence section of the Term Sheet.

4 35. The Loan Offer section of the Term Sheet states, "[i]n the event Lender provides
5 a Loan Offer consistent with the terms and conditions herein. The Due Diligence Deposit is non-
6 refundable." (Exhibit A.)

7 36. The return of the Due Diligence deposit to the PLAINTIFF is a binding term of
8 both the Commitment Letter and Term Sheet under the Disclosure section.

9 37. As a binding term, the Parties are obligated to perform the acts described in the
10 Term Sheet.

11 38. Any binding term that either party fails to fulfill constitutes a breach of contract
12 and failure of the party to perform their obligations under the agreement.

13 39. Accordingly, the Defendant must refund the \$40,000.00 Due Diligence Deposit
14 to the Plaintiff under the Term Sheet because of the different and additional terms contained in
15 the Loan Offer.

16 40. PLAINTIFF has made multiple demands to SILVERARCH for the return of the
17 Due Diligence Deposit to no avail.

18 41. As a result of SILVERARCH's refusal to refund the Due Diligence Deposit, the
19 PLAINTIFF has suffered damages.

20 42. Even more seriously, PLAINTIFF has incurred expenses in obtaining an alternate
21 loan with less favorable terms.

22 43. Due to SILVERARCH's breach of the Term Sheet and Commitment Letter,
23 PLAINTIFF was required to pay at least an additional \$60,000.00 under a loan for two years with
24 a one-year option. The loan described in the Term Sheet was for a two-year loan with a one-year
25 option.

26 44. Silver Arch has used the same aforementioned scheme against other victims in
27 the past, evidencing a pattern and practice of their unlawful and fraudulent conduct. (Exhibit D.)
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1 **FIRST CAUSE OF ACTION**

2 **Actual Fraud and Deceit Based on Intentional Misrepresentation**

3 [Civ. Code §§ 1572(1), 1709, 1710(1) and Common Law]

4 45. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 46. On or about March 26, 2019, SILVERARCH, acting intentionally and/or
8 recklessly, made false representations to PLAINTIFF that were material in PLAINTIFF's
9 decision to sign the Term Sheet for the loan on the property located at 414 Lesser St.

10 47. SILVERARCH intentionally falsely represented to PLAINTIFF that the terms
11 described in the Term Sheet would be binding on the Parties when they sent the Loan
12 Commitment to the PLAINTIFF, which the PLAINTIFF signed and returned.

13 48. SILVERARCH knew that the representation made in the Term Sheet were false
14 at the time they sent the Commitment Letter to the PLAINTIFF.

15 49. SILVERARCH has made a pattern and practice of the unlawful conduct
16 committed against the PLAINTIFF and has committed the same unlawful acts against others.
17 (Exhibit D.)

18 50. PLAINTIFF was unaware that SILVERARCH's representations were false and
19 justifiably relied on them when signing the Commitment Letter.

20 51. As a result, PLAINTIFF was damaged in that SILVERARCH refused to refund
21 the Due Diligence Fee paid to them by the PLAINTIFF as required under the terms of the Term
22 Sheet, made binding by the Commitment Letter.

23 52. PLAINTIFF has incurred damages in an amount no less than \$75,000.00, as well
24 as attorney fees and expenses in taking action to obtain remedies for SILVERARCH's false
25 representations.

26 53. SILVERARCH acted willfully and knowingly in its actions and representations,
27 and its conduct was oppressive and malicious for the purpose of wrongfully protecting itself and
28 damaging PLAINTIFF.

54. PLAINTIFF is entitled to punitive damages.

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COMPLAINT FOR DAMAGES

1 **SECOND CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 [Civil Code §§1572(2), 1709, 1710(2) and Common Law]

4 55. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 56. SILVERARCH made representations to PLAINTIFF in connection with the Term
8 Sheet and Commitment Letter entered into by the parties.

9 57. SILVERARCH owed a duty to the PLAINTIFF through their business and
10 contractual relationship.

11 58. SILVERARCH's representations and omissions were not warranted by the facts
12 known to SILVERARCH, which included that SILVERARCH never intended to provide the
13 terms that were described in the Term Sheet and Relied upon by the PLAINTIFF in continuing
14 the loan transaction to refinance the property at LESSER STREET.

15 59. SILVERARCH was unaware of the true status of SILVERARCH's ability to
16 perform pursuant to the agreement and intention to materially change the terms of the loan in the
17 Loan Application sent by them to the PLAINTIFF.

18 60. SILVERARCH has made a pattern and practice of the unlawful conduct
19 committed against the PLAINTIFF and has committed the same unlawful acts against others.

20 61. PLAINTIFF was damaged in that they were exposed to hardships due to
21 SILVERARCH's failure to perform under the terms described in the Term Sheet that was made
22 binding on the Parties through the Commitment Letter.

23 62. SILVERARCH's conduct is the actual and proximate cause of the harm the
24 Plaintiff has and continues to suffer.

25 63. SILVERARCH has incurred damages in an amount not less than \$75,000.00, as
26 well as attorney fees and expenses in taking action to obtain remedies for SILVERARCH's false
27 representations.

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1 **THIRD CAUSE OF ACTION**

2 **Breach of Written Contract**

3 [Common Law]

4 64. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 65. To recover damages for breach of contract, a PLAINTIFF must prove all of the
8 following: (1) that the parties formed a contract; (2) that PLAINTIFF did all, or substantially all,
9 of the significant things that the contract required him to do or was otherwise excused; (3) that
10 all conditions required by the contract for the SILVERARCH'S performance occurred or were
11 excused; and (4) that SILVERARCH did something or failed to do something that violates the
12 contract. (See CACI No. 303.)

13 66. PLAINTIFF and SILVERARCH entered into a contract under the Term Sheet and
14 Loan Commitment signed by the Parties.

15 67. The agreement was in writing and provided that SILVERARCH would provide a
16 loan to the PLAINTIFF under the terms described in the Term Sheet.

17 68. PLAINTIFF has completed her obligations under the agreement with
18 SILVERARCH, by paying the required Due Diligence Fee described in the Term Sheet, as well
19 as following all other provision thereunder.

20 69. PLAINTIFF had, at all times, been ready, willing and able to perform all of the
21 conditions of the agreement.

22 70. SILVERARCH failed to perform the duties and obligations as described under
23 the Term Sheet and Loan Commitment.

24 71. SILVERARCH has made a pattern and practice of the unlawful conduct
25 committed against the PLAINTIFF and has committed the same unlawful acts against others.

26 72. PLAINTIFF suffered damages that were actually and proximately caused by
27 SILVERARCH's breach of contract, as described in this Complaint, in an amount no less than
28 \$75,000.00, all paragraphs of which are incorporated here to the extent pertinent as if set forth
here in full.

1 73. As a direct and proximate result of SILVERARCH's conduct, PLAINTIFF
2 incurred damages, as well as attorney fees and expenses in taking action to obtain remedies for
3 SILVERARCH's false representations.

4 **FOURTH CAUSE OF ACTION**

5 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

6 [Common Law]

7 74. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
8 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
9 in full herein.

10 75. Every contract imposes upon each party a duty of good faith and fair dealing in
11 the performance of the contract such that neither party shall do anything which will have the
12 effect of destroying or injuring the right of the other party to receive the fruits of the contract.

13 76. SILVERARCH breached the covenant of good faith and fair dealing by acting to
14 injure the PLAINTIFF when they add materially different and additional terms to the Loan
15 Application than defined in the Term Sheet.

16 77. SILVERARCH's breach was wrongful, in bad faith, and unfair, and therefore in
17 violation of SILVERARCHS legal duties.

18 78. PLAINTIFF further alleges that SILVERARCH breached the covenant of good
19 faith and fair dealing when they omitted pertinent information regarding the agreement.

20 79. SILVERARCH's breach of the covenant of good faith and fair dealing was a
21 substantial factor in causing damage and injury to PLAINTIFF.

22 80. As a direct and proximate result of SILVERARCH's unlawful conduct herein
23 alleged, PLAINTIFF has suffered damages in an amount that exceeds \$75,000.00.

24 81. SILVERARCH has made a pattern and practice of the unlawful conduct
25 committed against the PLAINTIFF and has committed the same unlawful acts against others.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF respectfully prays for relief and judgment against the Defendants
28 as follows:

1. That the court award PLAINTIFF general damages;
2. That the court award PLAINTIFF punitive;
3. That the court award PLAINTIFF consequential damages;

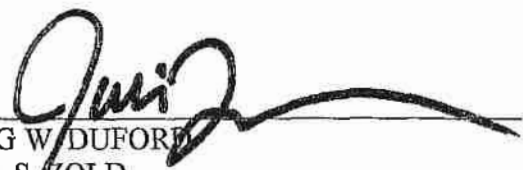
COMPLAINT FOR DAMAGES

- 1 4. Reasonable attorney's fees according to proof;
2 5. For costs of suit incurred herein; and
3 6. For such other and further relief as this Court deems just and proper.

4 Dated: October 3, 2019

Respectfully submitted:

5 DUFORD LAW, LLP

6
7
8 By: 
9 CRAIG W. DUFORD
10 JULIA S. ZOLD
11 Attorneys for Plaintiff MCKINNEY CAPITAL
12 & ADVISORY, LLC

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all claims so triable.

Dated: October 3, 2019

Respectfully submitted:

DUFORD LAW, LLP

By: 

CRAIG W. DUFORD

JULIA S. ZOLD

Attorneys for Plaintiff MCKINNEY CAPITAL
& ADVISORY, LLC

Exhibit A



Origination • Servicing • Advisory Services

March 1, 2019

Damian McKinney
McKinney Capital and Advisory

Via Email: c/o: Chris Ly; Cly@mcKinneycapital.com

Bruce H. Block; blockb@jmb.com

Dear Mr. McKinney:

Based on Silver Arch Capital Partner's ("Lender") preliminary evaluation of your loan request, Lender will initiate due diligence for a loan to McKinney Capital and Advisory ("Borrower") in the principal amount of Six Million Dollars (\$6,000,000) based on the terms of this Term Sheet. The general terms and conditions for the closing of any loan are as follows:

This Term Sheet will expire on March 1, 2019, time being of the essence, if not executed prior thereto.

Borrower: McKinney Capital and Advisory, a special purpose bankruptcy remote entity.

Guarantor: Damian McKinney, and any other non-passive entities or individuals having a 10% or greater interest in the borrower, shall provide guarantee of standard non-recourse carveouts only, including a covenant to not contest Lender's enforcement of its right in the event of default.

Requested Total Loan Amount: \$6,000,000

Loan Purpose/Use Of Proceeds: Refinance, pay leasing commissions, and construction overages

Collateral: The real property and improvements thereon located at 414-420 Lesser Street, Oakland, CA more particularly described on Schedule "A" attached hereto (the "Property"). The Loan shall be evidenced by a full set of loan documents including a Loan Agreement, Note and first mortgage or deed of trust covering the Property unless otherwise agreed to, each mortgage or deed of trust shall grant Lender a first priority security interest in the Property and related furniture, fixtures and equipment and all escrow and reserve accounts and a first priority assignment of leases, rents, profits, accounts receivable, other revenues, permits, licenses and contracts with respect to the Property, and assignment of the ownership interests in the borrowing entity.

Loan Term: 2 year(s), Interest Only.

Extension Option(s): Two 6 month extensions, upon payment of 1/2% of the loan amount per extension and provided the loan is not in default.

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TS4848_R5

Applicant's Initials

Handwritten initials, possibly "JMB", in dark ink.

Origination Fee: Two Percent (2%) of the loan amount.

Interest Rate: The interest rate for the term of the Loan shall be (i) Nine and One Half percent Percent (9.5%)

Prepaid Interest: TBD

LTV Ratio: Fifty-five Percent (55%)

Projected Closing Date: 4/4/2019

Minimum Interest: The Loan may be prepaid at any time upon payment of interest on the loan through the 9th month of the Term.

Brokerage: Any fees, commissions, etc. due and owing to any broker related to this transaction shall be the responsibility of Borrower and shall be paid by Borrower at or prior to closing of the Loan pursuant to the corresponding agreement.

Due Diligence: This Term Sheet and all of its terms and conditions will become effective only upon delivery to this office of a signed copy of this Term Sheet accompanied with a Due Diligence Deposit in the amount of Forty Thousand Dollars (\$40,000.00). Lender will then provide a Due Diligence checklist. The Due Diligence Deposit will be utilized for Lender's site inspection, appraisal, underwriting, and evaluation procedures. The unused portion of the Due Diligence deposit would be credited toward the Origination Fee at closing. In the event Lender does not perform its obligations hereunder, the Due Diligence Deposit would be refunded to Borrower.

Expenses: Borrower agrees to indemnify, defend, and hold harmless Lender against any and all actual and reasonable expenses incurred with this transaction, including but not limited to legal fees.

Loan Offer: Lender will underwrite the market value of the proposed collateral utilizing a national appraisal firm. Lender will then present Borrower with a Loan Offer indicating the amount Lender is willing to lend based on the value of proposed Collateral and the terms herein.

In the event Lender provides a Loan Offer consistent with terms and conditions herein, the Due Diligence Deposit is non-refundable.

Upon acceptance of the Loan Offer a Loan Application will be executed by Borrower, upon which an additional 1/2% of the loan amount would be due and payable; the unused portion of such amount to be fully credited toward the Origination Fee at closing, or in the event Borrower elects not to close, would be credited toward the breakup fee hereunder. Upon



engagement of counsel, a closing checklist, detailing all items, documents and deliveries necessary to close the Loan will be provided.

The Loan closing shall be subject to full loan documentation and subject to complete and acceptable due diligence including, but not be limited to the following:

- Title Insurance
- Alta Survey
- Insurance (Hazard, Liability, Flood)
- Opinion letter of Borrower Counsel
- Engineering/Structural review
- Environmental (Phase I / Phase II)
- Borrower's & Guarantor's financials (financials and the three most recent federal tax returns)

Governing Law: This Term Sheet and the other Loan Documents (except the mortgage or deed of trust which shall be governed by the law of the jurisdiction of the realty), shall be governed by and construed in accordance with the internal substantive laws of the State of New York, without regard to the choice of law principles of such state.

Choice of Forum: Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New York for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and Silver Arch Capital Partners under any theory of law in connection with, out of, or otherwise relating to this Term Sheet and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this Term Sheet, Borrower and Guarantor(s) authorize Silver Arch Capital Partners to obtain credit information on Borrower and Guarantor.

Miscellaneous: Borrower acknowledges and represents that this is a commercial transaction not subject to any state's consumer protection laws. Borrower understands that Lender would not be proceeding with Borrower without this representation.

Committee Approval: The undertaking of the Lender to make the Loan is subject to, among other things, the approval of its loan/credit committee.

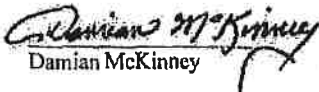
Break-up Fee: Borrower agrees to pay Lender a break-up fee of 1/2% of the Loan amount in the event Borrower accepts the Loan offer and fails to close the Loan with Lender due to no fault of Lender.

Lenders Right to Assign: In addition, the Borrower acknowledges and agrees that the Lender may sell, assign, hypothecate, pledge or otherwise transfer all or any portion of the Loan to a third party prior to, at or after the Loan closing.


Disclaimer: This Term Sheet is based upon preliminary information and loan request provided by Borrower. Lender has relied on all the information provided by Borrower as being true and correct in all respects. This Term Sheet shall be non-binding with the exception of the Break-up Fee, indemnification against expenses, and Due Diligence charges above. This

Term Sheet is not a loan Commitment. Final terms and conditions of any Loan will be subject to, among other things, Lender's due diligence, legal review including documentation, credit review procedures, and internal approvals, customary for a transaction of this nature in Lender's sole reasonable discretion. All due diligence and reports, including without limitation, title, engineering, environmental, and zoning must be acceptable to Lender and its counsel in all respects. Borrower agrees to indemnify and hold harmless the Lender and its officers, directors, employees, affiliates, advisors, agents and controlling persons from any and all losses, claims, damages and liabilities whether direct, indirect or consequential damages of any kind. This Term Sheet and its terms are submitted on a confidential basis and shall not be disclosed except to investors and advisors of Borrower who may be bound by such confidentiality arrangements. This Term Sheet and any subsequent documentation pertaining to any Loan shall be governed by the laws of the State of New York.

ACCEPTED AND AGREED
McKinney Capital and Advisory

BY:  3/6/2019
Damian McKinney Date

Silver Arch Capital Partners, LLC

BY:  3/7/19
Jonathan Weiner Date
Senior Director

Schedule "A"

414-420 Lesser Street, Oakland, CA

The total property is 61,500 Sq. Ft. and is 89% leased out to cannabis tenants.

Exhibit B



March 26, 2019

McKinney Capital and Advisory
414 Lesser St.
Oakland, CA
Attention: Damian McKinney

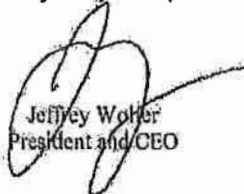
Via Email: c/o Mr. Chris Ly: CLy@mckinneycapital.com
Cc: Mr. Bruce Block: blockb@jmb.com

Dear Mr. McKinney :

As provided in the Term Sheet dated March 1, 2019 this shall confirm that the amount of the loan Silver Arch Capital Partners is willing to make based on the valuation of the collateral is \$6,000,000 based on the terms, conditions, and requirements of the Term Sheet.

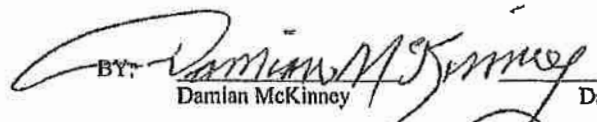
Please sign below acknowledging the above and return by March 29, 2019.

Very Truly Yours;



Jeffrey Wolter
President and CEO

ACCEPTED AND AGREED
McKinney Capital.

BY:  3/26/19
Damian McKinney Date

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Exhibit C



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March 27, 2019

Silver Arch Capital Partners, LLC
411 Hackensack Avenue, Suite 803
Hackensack, NJ 07601

Attention: Jeffrey Wolfer

Re: Proposed \$6,000,000 Financing on 414-420 Lesser St., Oakland, CA (the "Property")

Dear Mr. Wolfer:

The purpose of this letter is to set forth the terms and conditions intended to be submitted to the investment committee of Silver Arch Capital Partners, LLC (together with its affiliates and their respective successors and assigns hereinafter collectively being referred to as "Lender") in connection with the proposed loan (the "Loan") requested by the undersigned ("Applicant"). The terms and conditions of the Loan to be considered shall be those set forth in this letter and the term sheet attached hereto (collectively, this or the "Application").

Applicant will, contemporaneously with the execution of this Application, pay to Lender a good faith deposit of \$30,000, (the "Good Faith Deposit"); to be applied by Lender to cover fees and expenses incurred by Lender in connection with this Application and/or the Loan (the "Expenses"). Applicant shall remit to Lender promptly upon demand any additional amounts required by Lender, which amounts shall be deemed a part of the Good Faith Deposit and absent which Lender may elect not to proceed with diligence and/or underwriting of the Loan. The Good Faith Deposit and any such additional amounts shall be delivered to Lender pursuant to the instructions set forth on Exhibit B hereto or as otherwise directed by Lender. Applicant agrees to indemnify, defend, and hold Lender harmless against any Expenses. Expenses will include, without limitation, external legal counsel; audit services; travel; background and credit checks; lease reviews and underwriting and due diligence costs including third party fees incurred for insurance, zoning, appraisal, environmental and structural engineering reviews and reports. The obligations in this paragraph will survive in the event this Application is terminated for any reason.

Applicant agrees to cooperate with Lender and its counsel, agents and representatives, and provide Lender and its counsel, agents and representatives with all requested information in order that Lender may conduct its due diligence investigation. Applicant acknowledges that Lender will be relying on information supplied by Applicant in evaluating this Application and Applicant agrees to provide any updates to information previously provided on a timely basis and to disclose all material information concerning Applicant, Borrower or any of its principals, the Property, or any of the tenants of the Property. Applicant further agrees that any reviews, decisions, approvals, or acceptance to be made by Lender under this Application may be made by Lender in its sole and absolute discretion.

Applicant hereby acknowledges and represents that it is working solely with Lender to procure financing for the Property. If Applicant fails to close with Lender or has made any material

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Applicant's Initials _____

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misrepresentation or omitted any material fact, then in addition to the Good Faith Deposit, the Applicant shall pay to Lender upon demand, a Break-Up Fee equal to 1% of the Loan Amount as liquidated damages for the time and effort expended by Lender in connection with this Application, it being expressly acknowledged and agreed that Lender's actual damages in such instance will be impossible to calculate. This paragraph shall survive any termination of this Application.

Applicant understands and acknowledges that Lender's agreement to make the Loan is subject to receipt of approval from Lender's internal investment committee and Borrower's fulfillment of the Closing Conditions, each in form and substance satisfactory to Lender. Applicant acknowledges and agrees that this Application does not set forth all of the terms and conditions of the proposed Loan, but is merely intended to serve as an outline of the major points of understanding between the parties that will be set forth in the final Loan Documents. Accordingly, this Application is subject to revision by Lender and cannot be construed for any purpose as a commitment by Lender to fund any loan under these or any other terms. Further, no such offer or commitment may be made orally by any employee, officer, agent, or representative of Lender, and none should be implied based on any statements by, or conduct of, any such persons.

This Application shall be governed by, construed, and interpreted in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws. Applicant submits to the exclusive jurisdiction of the courts of the State of New York for the resolution of any dispute in connection with this Application. Both parties waive any right to a jury trial.

Applicant acknowledges its acceptance of the terms and conditions relating to the Loan described in this Application by (i) executing below, (ii) initialing each page of this Application where indicated, (iii) completing the certification attached hereto as Exhibit C for each Key Principal and each borrower and (iv) submitting each of the same to Lender along with the Good Faith Deposit. Applicant understands that failure to do so within five (5) days after the date hereof shall render this Application null and void.

Sincerely,

McKinney Capital and Advisory

By: _____

Name: _____

Title: _____

Date: _____



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March 27, 2019

Property Address: 414-420 Lesser St., Oakland, CA

Property Type: Industrial

Interest of Borrower: Fee Simple

Purpose of Financing: Refinance, TI/LC

Lender: Silver Arch Capital Partners, LLC (or an affiliate thereof), and its successors and/or assigns.

Borrower: Subject to due diligence, McKinney Capital Advisory, a special purpose bankruptcy remote entity, to be more specifically identified in the Loan Documents (defined below).

Borrower Structure: An existing or to be a newly formed single-purpose limited liability company or limited partnership acceptable to Lender.

Key Principal: Damian McKinney and any other entities or individuals having a 10% or greater interest in the Borrower.

Manager: Manager will be required to subordinate its rights under any management agreement to the Loan. The loan documents will provide that upon the occurrence of certain events Borrower may be required to terminate and replace Manager with an independent third party manager acceptable to Lender.

Loan Amount: Up to \$6,000,000 subject to adjustment to comply with the terms and conditions set forth in this Application.

Limitations on Loan Amount: On the date of Closing, the Loan shall have a loan-to-value ratio (the "LTVR") of no greater than 55 %.

Collateral: Lender shall have a first priority lien on the Property, including a first priority assignment of all leases, rents, issues and profits and a first priority and perfected security interest in all personal property, licenses, permits, contract rights, general intangibles and other assets of Borrower used in connection with the operation, maintenance and management of the Property, and assignment of the ownership interests in the Borrowing entity, to be evidenced and secured by Lender's standard loan documents (the "Loan Documents").

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Applicant's Initials _____

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Origination Fee: 2% of the Loan Amount.

Prepaid Interest: 12 months to be paid at closing.

Minimum Interest: The Loan may be prepaid at any time upon payment of interest on the loan through the 9th month of the term.

Maturity Date: One year after the Closing.

Extension Options: Up to two (2) extensions of six months each subject to: (i) no event of default existing; (ii) receipt by Lender of no less than 30 days irrevocable written notice of Borrower's intent to exercise the applicable Extension Option, (iii) the Property then having an LTVR of no greater than 55 % (iv) Borrower depositing initial or additional amounts into any reserve accounts then being required by Lender, (v) receipt by Lender of a ½ % extension fee for each extension; and (vi) such other requirements as are then standard for Lender.

Interest Rate: Nine and one half percent (9.5%) with interest payable monthly in arrears, calculated on an actual/360 basis.

Amortization: None.

Cash Management: Borrower will be required to establish an account (the "Clearing Account") at a bank acceptable to Lender with a long-term unsecured debt rating of at least "A" (or the equivalent) and a short-term unsecured debt rating of at least "A-1" (or the equivalent) from at least two (2) rating agencies (the "Clearing Bank"). Prior to Closing, Borrower shall be required to notify each tenant at the Property and each account debtor to remit all amounts due with respect to the Property directly to the Clearing Account during the term of the Loan.

The Clearing Account shall be under the sole control of the Lender. Provided no Sweep Event (as defined below) has occurred, funds deposited into the Clearing Account will be transferred to an account of Borrower. Upon the occurrence of a Sweep Event, all funds deposited into the Clearing Account will be transferred to an account of Lender (the "Collection Account"), to be applied by Lender in accordance with the terms of the Loan Documents.

A "Sweep Event" will occur: (i) if an event of default occurs under the Loan or the Property management agreement, (ii) if the DSCR for the Property for the prior 2 month period falls below 90% of the DSCR at the time of the Closing, (iii) if any tenant occupying more than 10% of the Property (either physical or economic occupancy) ceases to conduct its normal business operations at substantially all of its leased premises (iv) if any tenant occupying more than 10% of the Property (either physical or economic occupancy) (or such tenant's parent, if applicable) becomes insolvent, files for bankruptcy or has its senior unsecured debt rating fall below "BBB-" by Standard & Poor's ratings services (or the equivalent of such rating by Moody's).

Notwithstanding the foregoing, upon an event of default, all funds in the Clearing Account will be transferred to the Collection Account and Lender may apply any such funds in such order, proportion and priority as Lender may determine.

Reserves:

Borrower will be required to establish at Closing and fund and maintain during the term of the Loan ongoing reserves for real estate taxes and property and liability insurance premiums. Such reserves will be held by Lender as additional collateral for the Loan and applied as determined by Lender.

Closing:

The closing of the Loan shall occur no earlier than the first business day after Applicant and/or Borrower have satisfied all of Lender's requirements, including the Closing Conditions and any other terms and conditions set forth in this Application. Lender will work in good faith to complete the Closing by April 20, 2019 ; provided that Lender shall not be liable to Borrower for any failure of Lender to achieve a Closing by such date.

Closing Conditions:

Lender's conditions to closing the Loan shall include the following:

- (a) review and approval of Borrower's organizational documents and the credit history of Applicant, Manager, Key Principal and each of their principals;
- (b) delivery of a FIRREA appraisal from an MAI appraiser to be ordered by Lender at Borrower's expense and satisfaction of any assumptions therein;
- (c) delivery of a Phase I environmental report to be ordered by Lender at Borrower's expense addressing all environmental risks pursuant to Lender's scope of work, including, without limitation, asbestos, mold, radon and lead-based paint and, if required by Lender, a Phase II report and/or the implementation of an Operations and Maintenance Plan for any necessary remediation;
- (d) delivery of a structural engineering report to be ordered by Lender at Borrower's expense and, if the Property is located in a seismic zone of 3 or 4, a seismic report including a probable maximum loss analysis;
- (e) the absence of any event or development occurring or any information being received with respect to the Property, Applicant, Borrower, Manager, any Key Principal or any of their respective principals, or any tenants at the Property, prior to the date on which the Loan closing occurs which could, in Lender's opinion, materially and adversely affect the management, the net operating income or value of the Property or the Loan or the ability of Borrower to make any payments that would be required under the Loan;
- (f) execution and delivery of the Loan Documents and any related settlement statement(s) and other closing documentation;

- (g) delivery from Applicant's counsel of all legal opinions required by Lender;
- (h) delivery of copies of all commercial leases;
- (i) delivery of original tenant estoppels and subordination agreements acceptable to Lender from all commercial tenants and from any ground lessor;
- (j) delivery of financial statements (including tax returns) from Applicant and each Key Principal or as otherwise requested by Lender for both the last concluded financial year and last concluded financial quarter preceding the date of this Application, which financial statements of Applicant shall be prepared and reviewed by an independent accounting firm acceptable to Lender;
- (k) delivery of valid permanent certificates of occupancy and zoning confirmation letters or zoning reports from all applicable authorities with respect to all of the improvements constructed upon the Property;
- (l) delivery of evidence of insurance as more specifically set forth in "Insurance" below;
- (m) receipt of a policy of mortgagee title insurance and an updated certified survey, each in compliance with the terms and conditions listed on Exhibit A attached hereto;
- (n) no material adverse change in market conditions having occurred after the date of this Application and prior to Closing;
- (o) delivery of any other information requested by Lender and Lender's completion of due diligence and underwriting on Borrower, the Property and Key Principal; and
- (p) satisfaction of any other closing conditions customary for loans similar to the Loan;
- (q) confirmation of the cost to complete the proposed improvements (if applicable);
- (r) No material misrepresentation by or on behalf of Borrower.

Servicer:

To be appointed by Lender. The cost of such servicer (which cost shall not exceed 5 basis points) shall be paid by Borrower.

Loan Sale Cooperation:

Lender reserves the right to transfer the Loan to a trust or other similar securitization vehicle in a public or private offering or otherwise effectuate a public or private sale of the Loan (any of the foregoing, a "Sale"). Borrower agrees to cooperate with Lender to effectuate a Sale by, without limitation,

making amendments and/or modifications to the Loan Documents and/or Borrower's organizational documents that do not have a material adverse effect on Borrower's rights and obligations thereunder including, without limitation, creating a mezzanine loan, severing Borrower's promissory note and creating one or more senior and/or subordinate notes (i.e., an A/B or A/B/C structure), creating additional components of the Loan, reducing the number of components of the Loan, revising the interest rate of any components (provided that the weighted average of the interest rates on all such components does not exceed the Interest Rate), reallocating the principal balances of the components, or eliminating the component structure and/or the multiple note structure of the Loan (including the elimination of the related allocations of principal and interest payments).

Assignment by Lender: Lender may assign the all or part of the Loan and any agreements pertaining thereto, including this Application, at any time and to any party in its sole discretion.

Other Debt: None permitted.

Reporting: Borrower will provide Lender with, among other things, quarterly certified rent rolls and quarterly and annual income statements and balance sheets (collectively, the "Financial Statements"); provided that until the Loan is included in a Sale, the Financial Statements shall also be provided monthly. The annual Financial Statements will be required to be prepared and reviewed by an independent accounting firm acceptable to Lender.

Recourse Liability: The Loan will be fully recourse to Borrower; and Key Principals shall provide guarantee of standard non-recourse carveouts only, including a covenant to not contest Lender's enforcement of its right in the event of default.

Assignment: None permitted.

Insurance: The Property will be required to be covered by fire and casualty, machine and boiler, business interruption, terrorism, liability and any additional insurance as may be required, all in form and substance satisfactory to Lender.

Brokers: Borrower shall (i) represent to Lender the identity of all brokers, finders or correspondents engaged by Borrower in connection with the Loan, (ii) pay any and all commissions and other similar fees owing in connection with the parties identified in (i) and (iii) indemnify and defend Lender from and against all costs and expenses incurred by Lender as a result of a breach of the foregoing or otherwise in connection with any claim for a brokerage commission or fee made against Lender with respect to the Loan.

Confidentiality: This Application is being delivered with the understanding that neither it nor the substance thereof shall be disclosed by Borrower or any Key Principal or any of their respective affiliates to any third person, except those who are in confidential relationships to any of them (i.e., Borrower's counsel,

accountants and other retained business advisors) or as may be required by law.

Special Conditions:

Borrower acknowledges that this is a commercial transaction not subject to any state's consumer protection laws. Borrower understands that Lender will not proceed without this representation.

Choice of Forum:

Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New York for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and Silver Arch Capital Partners under any theory of law in connection with, out of, or otherwise relating to this Loan Application and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this Loan Application, Borrower and Guarantor(s) authorize Silver Arch Capital Partners to obtain credit information on Borrower and Guarantor.



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EXHIBIT A

TITLE AND SURVEY REQUIREMENTS

I. TITLE REQUIREMENTS:

A title insurance policy with a liability limit not less than the final Loan Amount, insuring the Mortgage as a first lien on the title to the Property and issued by a nationally recognized title insurance company acceptable to Lender. The title insurance policy shall be subject only to such exceptions as shall be approved by, and shall contain such endorsements as may be required by, Lender.

II. SURVEY REQUIREMENTS:

A current title survey of the Property by a licensed or registered land surveyor acceptable to Lender, certified to Lender, its successors and/or assigns and the appropriate title insurance company, which survey and certification shall be in form, scope and substance acceptable to Lender. The title survey shall be prepared in accordance with the Minimum Standard Detail Requirements and Classifications for ALTA/ACSM Land Title Surveys, as adopted in 2011.

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Applicant's Initials _____

EXHIBIT B

GOOD FAITH DEPOSIT DELIVERY INSTRUCTIONS

IF BY WIRE:

Contact: Tony Petruccello, Silver Arch Capital Partners, LLC
Email: tonypetruccello@silverarchcp.com
Phone: 201-254-2558

EXHIBIT C**CERTIFICATION OF PRINCIPAL LITIGATION**

Complete a separate sheet for each general partner, managing member, control party, guarantor, member, limited partner, or shareholder owning equal to or more than 10%, significant shareholder and corporate officer (each, a "Significant Principal"). All questions should be answered for all entities in which each Significant Principal has had an ownership interest.

	<u>YES</u>	<u>NO</u>
1. Have you ever been declared bankrupt or filed a petition or action under any bankruptcy or insolvency laws or had a judgment against you? If yes, please attach a detailed explanation.		
2. Have you ever had a judgment against you? If yes, please attach a detailed explanation.		
3. Have you ever been a principal, partner, shareholder, or member with any direct or indirect ownership interests in an entity that has declared bankruptcy or filed a petition or action under any bankruptcy or insolvency laws? If yes, please attach a detailed explanation.		
4. Have you ever been a guarantor of an entity that has declared bankruptcy? If yes, please attach a detailed explanation.		
5. Have you ever has any claim made against you under a guaranty? If yes, please attach a detailed explanation.		
6. Have you ever had property foreclosed upon or given title or deed in lieu thereof? If yes, please attach a detailed explanation.		
7. Have you ever been a principal, partner, shareholder, or member of an entity that had a property foreclosed upon or given title or deed in lieu thereof? If yes, please attach a detailed explanation.		
8. Have you ever had repossession? If yes, please attach a detailed explanation.		
9. Have you ever requested or received modification of the terms of any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
10. Have you ever been a principal, partner, shareholder, or member of an entity that requested or received modification of the terms of any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
11. Have you ever been in default on or received forbearance on any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
12. Have you ever been a principal, partner, shareholder, or member of an entity that has ever been in default on or received forbearance on any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
13. Have you ever been arrested or convicted of or plead guilty or no contest to a felony or a misdemeanor or are you presently the subject of an arrest, complaint or indictment charging a felony or a misdemeanor? If yes, please attach a detailed explanation.		
14. Are you a co-maker, guarantor, or endorser on a note?		

15. Are you or have you ever been a party to any claim or lawsuit?		
16. Are any of your assets pledged as collateral?		
17. Do you owe any taxes for the years prior to the current year?		
18. Have you been the subject of an IRS audit in the past three years?		
19. Are you a U.S. citizen?		
20. Are you a resident alien?		
21. Have you ever obtained credit under any other name or have been known by any other name in the last 10 years? If yes, list other names or aliases: _____		

The information contained in this certificate and any explanation(s) attached hereto is true, accurate, and complete.

McKinney Capital and Advisory

By: _____
Name:
Title:

Exhibit D



Find What are you looking for?

Near San Diego, CA

1 Complaints

Show All Complaints

Sort By Most Recent

Complaint Type: Problems with Product/Service

Status: Answered ?

05/08/2017



Silver Arch took \$ 80,000 of my money to refinance an existing loan. After 4 months, at the very last minute they decided not to help refinance my loan. They did not indicate until after they were wired an initial \$ 50,000 and later an additional \$ 30,000 'good faith' deposit. After 4 months of encouraging procedures on behalf of Silver Arch representative, they inform me that they will not sign a contract to refinance. In addition, they refused to refund all of my deposit instead offering me just \$ 25,000 back if I signed a gag contract. I feel they are dishonest and their encouragement in proceeding with approval of the loan over 4 months, and the taking of my money while never expressing that I would be refused is criminal. I am disabled and cannot work. I was trying to refinance a business property before I lost it. \$ 80,000 is a tremendous amount of money for me and I had to take it from my Retirement plan which incurred federal penalties for early disbursement. Despite my...

Silver Arch Capital Funding headquartered in New Jersey is under the Kennedy umbrella. Ripped off to the tune of 79,000 of 'due diligence' with a sudden drop of my 'assured' bridge loan. Was told I could get 25,000 back if I signed a Hold harmless agreement. I declined and was fortunate enough to find another broker who found me a Real lender for my needs. I had to "RE-Purchase" my appraisals and surveys as Silver Arch never paid the companies despite the fact that I sent Silver Arch the funds for the work at the time. So the appraisers and surveyors did the work and I paid Silver Arch but.... they were not paid from my due diligence funds paid to Silver Arch. I paid twice. The whole scam that Kennedy/Silver Arch/ Matt Cole and scam attorney Jeff Wolfer are running is horrible. To call it a scam is misleading and too kind, This is racketeering fraud on a corporate financial level. I am suing for my money back.... All of it plus Pain and Suffering. Companies such as Silver Arch and Kennedy who prey on the most desperate of American businesses must be exposed as should their minions Jeff Wolfer and Matt Cole. Voices in scammed unity will be heard if we all try. If not for us then for the Greater Good.

Michele Mittelbronn
mittelbronn160@gmail.com

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): McKinney Capital and Advisory Group LLC		
DEFENDANT(S): Silver Arch Capital Partners LLC		
SHORT TITLE: MCKINNEY CAPITAL & ADVISORY LLC VS SILVER ARCH CAPITAL PARTNERS LLC [IMAGED]		
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER: 37-2019-00052881-CU-FR-CTL

Judge: Kenneth J Medel

Department: C-66

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/07/2019

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00052881-CU-FR-CTL

CASE TITLE: McKinney Capital & Advisory LLC vs Silver Arch Capital Part

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W Broadway
MAILING ADDRESS: 330 W Broadway
CITY AND ZIP CODE: San Diego, CA 92101-3827
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7066

PLAINTIFF(S) / PETITIONER(S): McKinney Capital and Advisory Group LLC

DEFENDANT(S) / RESPONDENT(S): Silver Arch Capital Partners LLC

MCKINNEY CAPITAL & ADVISORY LLC VS SILVER ARCH CAPITAL PARTNERS LLC [IMAGED]

**NOTICE OF CASE ASSIGNMENT
and CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

37-2019-00052881-CU-FR-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Kenneth J Medel

Department: C-66

COMPLAINT/PETITION FILED: 10/04/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	07/10/2020	08:30 am	C-66	Kenneth J Medel

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig W. DuFord DuFord Law, LLP 3611 5th Ave 92103 CA 92103 TELEPHONE NO.: 619-546-4291 FAX NO. (Optional): 619-354-2449 E-MAIL ADDRESS (Optional): craig@dufordlaw.com ATTORNEY FOR (Name): McKinney Capital and Advisory Group, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/10/2019 at 04:24:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central Division	
PLAINTIFF/PETITIONER: McKinney Capital and Advisory Group, LLC DEFENDANT/RESPONDENT: Silver Arch Capital Partners, LLC	CASE NUMBER: 37-2019-00052881-CU-FR-CTL
Amended PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): Notice of Case Assignment
3. a. Party served (specify name of party as shown on documents served):
 Matt Cole, Vice President of Silver Arch Capital
 - b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
 411 Hackensack Ave Suite 803, Hackensack, NJ 07601
5. I served the party (check proper box)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 10/21/2019 (2) at (time): 4:50PM
 - b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☒ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: McKinney Capital and Advisory Group, LLC	CASE NUMBER:
DEFENDANT/RESPONDENT: Silver Arch Capital Partners, LLC	37-2019-00052881-CU-FR-CTL

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify):

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: Anthony Iavarone
- b. Address: 400 Tenaflly Rd #70, Tenaflly, NJ 07670
- c. Telephone number: (201) 751-1771
- d. The fee for service was: \$ 65
- e. I am:

- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 10/21/2019

Anthony Iavarone

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

12 Plaintiff,
13

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

16 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/20/2019 at 10:09:00 AM

Clerk of the Superior Court
By Megan Dietenhofer, Deputy Clerk

Case No.: 37-2019-00052881-CU-FR-CTL

NOTICE OF FILING OF REMOVAL

Judge: The Honorable Kenneth J. Medel
Dept: C-66

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on November 20, 2019, Defendant Silver Arch Capital Partners
4 LLC filed a Notice of Removal, pursuant to 28 U.S.C. § 1441 *et seq.*, in the above-captioned action
5 removing this action to the United States District Court for the Southern District of California.

6 PLEASE TAKE FURTHER NOTICE that Defendant, upon filing the Notice of Removal in the
7 office of the Clerk of the United States District Court for the Southern District of California, also filed
8 copies thereof with the Clerk of the Superior Court of the State of California, County of San Diego, to
9 effect removal pursuant to 28 U.S.C. § 1446.

10 A copy of the Notice of Removal is annexed hereto.

11
12 Date: November 20, 2019

WRIGHT, L'ESTRANGE & ERGASTOLO

13 *Attorneys for Defendant*
14 *Silver Arch Capital Partners LLC*

15 By: 
16 Joseph T. Ergastolo

EXHIBIT A

1 WRIGHT, L'ESTRANGE & ERGASTOLO

Joseph T. Ergastolo (SBN 137807)

2 jte@wlelaw.com

Davin H. Kono (SBN 312382)

3 dkono@wlelaw.com

402 West Broadway, Suite 1800

4 San Diego, California 92101

(619) 231-4844

5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*

Silver Arch Capital Partners LLC

7
8
9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 MCKINNEY CAPITAL &
12 ADVISORY GROUP, LLC, a
California limited liability company,

13 Plaintiff,

14 v.

15 SILVER ARCH CAPITAL
16 PARTNERS LLC, a New Jersey limited
liability company; and DOES 1 through
17 50, inclusive,

18 Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
TO FEDERAL COURT**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 *et seq.*,
4 Defendant Silver Arch Capital Partners LLC (“Silver Arch” or “Defendant”), by and
5 through its undersigned attorneys, hereby removes the above-captioned civil action, and
6 all claims and causes of action therein, from the Superior Court of California for the
7 County of San Diego, Central Division, where it is currently pending as Case No. 37-
8 2019-00052881-CU-FR-CTL, to the United States District Court for the Southern District
9 of California, and in support thereof, respectfully states as follows:

10 **GROUND FOR REMOVAL**

11 1. Plaintiff McKinney Capital and Advisory Group LLC (“McKinney Capital”
12 or “Plaintiff”) commenced this action in the Superior Court of California, County of San
13 Diego, Central Division, Case No. 37-2019-00052881, on or about October 4, 2019. A
14 true copy of the Complaint is attached hereto as Exhibit A.

15 2. As set forth more fully below, this Court has subject matter jurisdiction
16 under 28 U.S.C. § 1332, which confers original jurisdiction of “all civil actions where the
17 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,
18 and is between . . . citizens of different States.”

19 **A. The Amount-In-Controversy Requirement Is Satisfied.**

20 3. The amount in controversy in this matter exceeds the sum or value of
21 \$75,000, exclusive of interest and costs, satisfying the amount in controversy
22 requirements of 28 U.S.C. § 1332(a). The Complaint alleges that Plaintiff “has suffered
23 damages in an amount that exceeds \$75,000.00.” Ex. A [Compl. at ¶ 80]. Because the
24 amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs,
25 removal on the basis of diversity should be allowed pursuant to 28 U.S.C. § 1441(b).

26 **B. Complete Diversity Exists Between Plaintiff And Defendant.**

27 4. At the time this lawsuit was filed and as of the date of this notice, Defendant
28 Silver Arch was and is a New Jersey limited liability company with its principal place of

business in Hackensack, New Jersey. None of the members of Defendant are citizens of the State of California.

5. At the time of the filing of this action, Plaintiff McKinney Capital, alleged that it is a California limited liability company with its principal place of business in San Diego, California. Ex. A [Compl. at ¶ 1]. Upon information and belief, none of the members of Plaintiff are citizens of the State of New Jersey.

6. The Complaint also names Defendants “DOE 1 through DOE 50.” Ex. A [Compl. at ¶ 3]. For purposes of removal, however, “the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1). Therefore, the inclusion of “Doe” defendants in the state court Complaint has no effect on removability. In determining whether diversity of citizenship exists, only the named defendants are considered. See Newcombe v. Adolf Coors Co., 157 F.3d 686, 690-91 (9th Cir. 1998).

7. Because no plaintiff shares a state of citizenship with any defendant, the diversity requirement of 28 U.S.C. § 1332 is satisfied.

**THE OTHER PROCEDURAL REQUISITES
FOR REMOVAL ARE SATISFIED**

8. This removal notice is timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty days after Defendant’s receipt, through service or otherwise, of a copy of the initial pleading setting forth the claims for relief upon which the action or proceeding is based. Plaintiff effected service upon Defendant on October 21, 2019, by delivering a copy of the Complaint and Summons to Defendant’s offices in Hackensack, New Jersey, and Defendant files this notice within thirty days after receipt thereof.

9. This action is properly removed to the United States District Court for the Southern District of California, which is “the district and division embracing the place where [the] action is pending.” 28 U.S.C. § 1441(a); see also 28 U.S.C. § 84(d) (listing the counties within the Southern District of California).

10. Defendant has complied with 28 U.S.C. §§ 1446(a) and (d). Under 28 U.S.C. § 1446(a), a true and correct copy of all the process, pleadings, or orders on file

1 in the state court or served on Defendant in the state court are attached hereto as Exhibit
2 A. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly serve a notice of filing of
3 removal, with a copy of this Notice of Removal attached thereto, on counsel for Plaintiff
4 and will file a notice of filing of removal, with a copy of this Notice of Removal attached
5 thereto, with the Clerk of the Superior Court of California, County of San Diego, Central
6 Division, Case No. 37-2019-00052881-CU-FR-CTL. Copies of the Notice (without
7 Exhibit A) and the certificate of service of the Notice to Plaintiff and the Superior Court
8 of the State of California, County of San Diego are attached hereto as Exhibit B.

9
10 Date: November 20, 2019

WRIGHT, L'ESTRANGE & ERGASTOLO

11 *Attorneys for Defendant*
12 *Silver Arch Capital Partners LLC*

13 By: /s/ Joseph T. Ergastolo
14 Joseph T. Ergastolo

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

McKinney Capital and Advisory Group LLC

(b) County of Residence of First Listed Plaintiff San Diego, California

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DUFORD LAW, LLP

Craig W. Duford (SBN 305823); Julia S. Zold (SBN 324847)

3611 Fifth Ave., San Diego, CA 92103 (619) 546-4291

DEFENDANTS

Silver Arch Capital Partners LLC

County of Residence of First Listed Defendant Hackensack, New Jersey

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

WRIGHT, L'ESTRANGE & ERGASTOLO

Joseph T. Ergastolo (SBN 137807); Davin H. Kono (SBN 312382)

402 W. Broadway, Suite 1800, San Diego, CA 92101 (619) 234-4844

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)

Brief description of cause:

Diversity suit for breach of contract, fraud, negligent misrep., breach of implied covenant good faith & fair dealing

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/20/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joseph T. Ergastolo

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SILVER ARCH CAPITAL PARTNERS, LLC., a New Jersey limited liability company; and DOES 1-50, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

MCKINNEY CAPITAL & ADVISORY, LLC., a California limited liability company.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/04/2019 at 09:48:14 PM

Clerk of the Superior Court
By Jacqueline J. Walters, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of San Diego County
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2019-00052881-CU-FR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Craig DuFord, DuFord Law, LLP, 3611 Fifth Avenue, San Diego, CA 92103; Ph. 619-546-4291.

DATE: 10/07/2019
(Fecha)

Clerk, by J. Walters, Deputy
(Secretario) J. Walters (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Silver Arch Capital Partners, LLC
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig DuFord, SBN 305823/ Julia Zold SBN 324847 DuFord Law, LLP 3611 Fifth Avenue San Diego, CA 92103 TELEPHONE NO.: (619) 546-4291 FAX NO.: (619) 354-2449 ATTORNEY FOR (Name): McKinney Capital and Advisory Group, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/04/2019 at 09:48:14 PM Clerk of the Superior Court By Jacqueline J. Walters, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, 92103 BRANCH NAME: Central Division	CASE NUMBER: 37-2019-00052881-CU-FR-CTL
CASE NAME: McKinney Capital and Advisory Group, LLC v. Silver Arch Capital Partners, LLC	JUDGE: Judge Kenneth J Medel DEPT:

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (46)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input checked="" type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 10/04/19
 Julia Zold

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 CRAIG W. DUFORD, State Bar No. 305823
2 *craig@dufordlaw.com*
3 JULIA S. ZOLD, State Bar No. 324847
4 *julia@dufordlaw.com*
5 DUFORD LAW, LLP
6 3611 Fifth Ave
7 San Diego, CA 92103
8 Ph: (619) 546-4291
9 Fax: (619) 354-2449
10 Attorneys for Plaintiff

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/04/2019 at 09:48:14 PM

Clerk of the Superior Court
By Jacqueline J. Walters, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 MCKINNEY CAPITAL &
12 ADVISORY, LLC., a California
13 limited liability company,

14 Plaintiff,

15 vs.

16 SILVER ARCH CAPITAL
17 PARTNERS, LLC., a New Jersey
18 limited liability company; and DOES
19 1-50, inclusive;

20 Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

COMPLAINT FOR

1. **ACTUAL FRAUD AND DECEIT BASED
ON INTENTIONAL
MISREPRESENTATION;**
2. **NEGLIGENT MISREPRESENTATION;**
3. **BREACH OF WRITTEN CONTRACT;
AND**
4. **BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING.**

DEMAND FOR JURY TRIAL

21 Plaintiff alleges:

22 1. Plaintiff, MCKINNEY CAPITAL & ADVISORY, LLC., ("PLAINTIFF"), is a
23 California limited liability company and is now, and at all times mentioned in this Complaint,
24 had a principal place of business in San Diego County, California.

25 2. Defendants, SILVER ARCH CAPITAL PARTNERS, LLC., ("SILVERARCH")
26 is a New Jersey limited liability company and is now, and at all times mentioned in this Complaint,
27 doing business in the state of California.

COMPLAINT FOR DAMAGES

1 3. DOE 1 through DOE 50, inclusive, are fictitious names of defendants sued herein
2 under the provisions of Code Civ. Proc., § 474. Plaintiff is informed and believes and thereon
3 alleges that each of the fictitiously named defendants is responsible in some manner for the
4 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
5 caused by such defendants.

6 4. Plaintiff is informed and believes and thereon alleges, that each of the Defendants
7 herein was, at all times relevant to this action, the agent, employee, representing partner, or joint
8 venture of the remaining Defendants and was acting within the course and scope of that
9 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
10 defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the
11 remaining defendants.

12 **JURISDICTION AND VENUE**

13 5. This Court has jurisdiction over this action pursuant to California Code of Civil
14 Procedure § 410.10

15 6. Venue is proper because the facts and circumstances giving rise to the allegations
16 in this Complaint occurred in San Diego County.

17 7. The allegations of this Complaint stated on information and belief are likely to
18 have evidentiary support after a reasonable opportunity for further investigation or discovery.

19 **FACTUAL BACKGROUND**

20 8. The PLAINTIFF reached out to SILVERARCH to refinance a loan on the real
21 property located at 414 Lesser Street, Oakland, CA 94601 ("LESSER STREET").

22 9. On or around, March 1, 2019, SILVERARCH provided the PLAINTIFF with a
23 Term Sheet. (Exhibit A.)

24 10. The Term Sheet included material terms of the refinancing loan.

25 11. On or around March 6, 2019, the PLAINTIFF, signed the Term Sheet and wired
26 SILVERARCH \$40,000.00, thereby agreeing to the material terms of the loan as described in the
27 Term Sheet.

1 12. Specifically, the Term Sheet was for a \$6,000,000.00 interest-only loan for a term
2 of two years, with a closing date of April 4, 2019.

3 13. The Term Sheet, required the PLAINTIFF to make a "Due Diligence Deposit in
4 the amount of \$40,000.00." The \$40,000.00 was to be returned to the PLAINTIFF in the event
5 the Lender, SILVERARCH, fails to perform its obligations as described in the Term Sheet.

6 14. The Disclosure section of the Term Sheet states that "[t]his Term Sheet shall be
7 non-binding with the exception of the Break-up Fee, indemnification against expenses, and Due
8 Diligence charges above."

9 15. Consequently, the Term Sheet's clauses concerning the Break-up Fee,
10 indemnification against expenses, and Due Diligence charges became binding on the Parties
11 when they signed the sheet. Further, the Commitment Letter made the entire Term Sheet binding
12 on the parties as the commitment was "based on the term's conditions, and requirements of the
13 Term Sheet."

14 16. On March 26, 2019, SILVERARCH provided a commitment letter to PLAINTIFF
15 stating that SILVERARCH would provide a loan in the amount of \$6,000,000 based on the terms
16 and conditions included in the Term Sheet dated March 1, 2019. (Exhibit B.)

17 17. PLAINTIFF acknowledged the Commitment Letter on or about March 26, 2019,
18 and returned it to SILVERARCH, thereby making the terms listed in the Term Sheet binding on
19 the parties.

20 18. PLAINTIFF relied on the terms provided by SILVERARCH in the Term Sheet
21 when they signed the Commitment Letter.

22 19. On or around March 27, 2019, SILVERARCH sent the PLAINTIFF a document
23 which they stated was the Loan Application regarding the LESSER STREET refinancing loan.
24 (Exhibit C.)

25 20. The Loan Application sent to the PLAINTIFF was not addressed to any of their
26 employees and contained different and additional material terms that were not included in the
27 Term Sheet.

28 21. The Loan Application included stringent, non-market, cash management
provisions that were neither included in the Term Sheet, nor mentioned by SILVERARCH in
any communications between them and the PLAINTIFF occurring before to March 26, 2019.

1 22. The Loan application moved the closing date from April 4, 2019, which was
2 listed under the Term Sheet, to April 20, 2019.

3 23. Further, the Term Sheet provided that "Borrower agrees to pay Lender a Break-
4 up fee of ½ % of the Loan amount," where the Loan Application provided a Break-up Fee of
5 "1% of the Loan Amount" (Exhibit A & C.)

6 24. A Break-up Fee of "½ %" of the \$6,000,000.00 loan amount equates to
7 \$30,000.00.

8 25. Conversely, a Break-up Fee of "1 %" of the \$6,000,000.00 loan amount equates
9 to \$60,000.00.

10 26. The \$30,000.00 increase in the Break-up Fee constitutes a material change to the
11 Term Sheet that was signed by the Plaintiff.

12 27. SILVERARCH also added a fee for servicer cost to the Loan Application.(Exhibit
13 C.)

14 28. The signed Term Sheet did not contain any section mentioning the servicer fee
15 that the Plaintiff would be obligated to pay.

16 29. The servicer cost included in the Loan Application is material to the PLAINTIFF
17 as they are required to pay them in an amount not to exceed five basis points, equal to \$30,000.00.

18 30. The changes made to the Loan Application, described above, are material in that
19 the PLAINTIFF would not have signed the Term Sheet or Loan Commitment had they been
20 disclosed to the PLAINTIFF before signing.

21 31. Thus, any changes made by SILVERARCH as to those terms agreed upon in the
22 Term Sheet and Commitment Letter constitute a failure of SILVERARCH to meet their duties
23 and obligations.

24 32. On or around April 2, 2019, SILVERARCH informed PLAINTIFF that they
25 would not be able to remove the materially different and additional terms from the Loan
26 Application.

27 33. SILVERARCH's refusal to remove the different and additional material terms
28 constitutes a breach of the Term Sheet dated March 1, 2019, as well as a breach of the
Commitment Letter.

1 34. After SILVERARCH's breach of the Term Sheet and Commitment Letter,
2 PLAINTIFF refused to sign the Loan Application and requested that their Due Diligence Fee of
3 \$40,000.00 be returned to them as described under the Due Diligence section of the Term Sheet.

4 35. The Loan Offer section of the Term Sheet states, "[i]n the event Lender provides
5 a Loan Offer consistent with the terms and conditions herein. The Due Diligence Deposit is non-
6 refundable." (Exhibit A.)

7 36. The return of the Due Diligence deposit to the PLAINTIFF is a binding term of
8 both the Commitment Letter and Term Sheet under the Disclosure section.

9 37. As a binding term, the Parties are obligated to perform the acts described in the
10 Term Sheet.

11 38. Any binding term that either party fails to fulfill constitutes a breach of contract
12 and failure of the party to perform their obligations under the agreement.

13 39. Accordingly, the Defendant must refund the \$40,000.00 Due Diligence Deposit
14 to the Plaintiff under the Term Sheet because of the different and additional terms contained in
15 the Loan Offer.

16 40. PLAINTIFF has made multiple demands to SILVERARCH for the return of the
17 Due Diligence Deposit to no avail.

18 41. As a result of SILVERARCH's refusal to refund the Due Diligence Deposit, the
19 PLAINTIFF has suffered damages.

20 42. Even more seriously, PLAINTIFF has incurred expenses in obtaining an alternate
21 loan with less favorable terms.

22 43. Due to SILVERARCH's breach of the Term Sheet and Commitment Letter,
23 PLAINTIFF was required to pay at least an additional \$60,000.00 under a loan for two years with
24 a one-year option. The loan described in the Term Sheet was for a two-year loan with a one-year
25 option.

26 44. Silver Arch has used the same aforementioned scheme against other victims in
27 the past, evidencing a pattern and practice of their unlawful and fraudulent conduct. (Exhibit D.)
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1 **FIRST CAUSE OF ACTION**

2 **Actual Fraud and Deceit Based on Intentional Misrepresentation**

3 [Civ. Code §§ 1572(1), 1709, 1710(1) and Common Law]

4 45. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 46. On or about March 26, 2019, SILVERARCH, acting intentionally and/or
8 recklessly, made false representations to PLAINTIFF that were material in PLAINTIFF's
9 decision to sign the Term Sheet for the loan on the property located at 414 Lesser St.

10 47. SILVERARCH intentionally falsely represented to PLAINTIFF that the terms
11 described in the Term Sheet would be binding on the Parties when they sent the Loan
12 Commitment to the PLAINTIFF, which the PLAINTIFF signed and returned.

13 48. SILVERARCH knew that the representation made in the Term Sheet were false
14 at the time they sent the Commitment Letter to the PLAINTIFF.

15 49. SILVERARCH has made a pattern and practice of the unlawful conduct
16 committed against the PLAINTIFF and has committed the same unlawful acts against others.
17 (Exhibit D.)

18 50. PLAINTIFF was unaware that SILVERARCH's representations were false and
19 justifiably relied on them when signing the Commitment Letter.

20 51. As a result, PLAINTIFF was damaged in that SILVERARCH refused to refund
21 the Due Diligence Fee paid to them by the PLAINTIFF as required under the terms of the Term
22 Sheet, made binding by the Commitment Letter.

23 52. PLAINTIFF has incurred damages in an amount no less than \$75,000.00, as well
24 as attorney fees and expenses in taking action to obtain remedies for SILVERARCH's false
25 representations.

26 53. SILVERARCH acted willfully and knowingly in its actions and representations,
27 and its conduct was oppressive and malicious for the purpose of wrongfully protecting itself and
28 damaging PLAINTIFF.

54. PLAINTIFF is entitled to punitive damages.

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COMPLAINT FOR DAMAGES

1 **SECOND CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 [Civil Code §§1572(2), 1709, 1710(2) and Common Law]

4 55. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 56. SILVERARCH made representations to PLAINTIFF in connection with the Term
8 Sheet and Commitment Letter entered into by the parties.

9 57. SILVERARCH owed a duty to the PLAINTIFF through their business and
10 contractual relationship.

11 58. SILVERARCH's representations and omissions were not warranted by the facts
12 known to SILVERARCH, which included that SILVERARCH never intended to provide the
13 terms that were described in the Term Sheet and Relied upon by the PLAINTIFF in continuing
14 the loan transaction to refinance the property at LESSER STREET.

15 59. SILVERARCH was unaware of the true status of SILVERARCH's ability to
16 perform pursuant to the agreement and intention to materially change the terms of the loan in the
17 Loan Application sent by them to the PLAINTIFF.

18 60. SILVERARCH has made a pattern and practice of the unlawful conduct
19 committed against the PLAINTIFF and has committed the same unlawful acts against others.

20 61. PLAINTIFF was damaged in that they were exposed to hardships due to
21 SILVERARCH's failure to perform under the terms described in the Term Sheet that was made
22 binding on the Parties through the Commitment Letter.

23 62. SILVERARCH's conduct is the actual and proximate cause of the harm the
24 Plaintiff has and continues to suffer.

25 63. SILVERARCH has incurred damages in an amount not less than \$75,000.00, as
26 well as attorney fees and expenses in taking action to obtain remedies for SILVERARCH's false
27 representations.

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1 **THIRD CAUSE OF ACTION**

2 **Breach of Written Contract**

3 [Common Law]

4 64. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
5 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
6 in full herein.

7 65. To recover damages for breach of contract, a PLAINTIFF must prove all of the
8 following: (1) that the parties formed a contract; (2) that PLAINTIFF did all, or substantially all,
9 of the significant things that the contract required him to do or was otherwise excused; (3) that
10 all conditions required by the contract for the SILVERARCH'S performance occurred or were
11 excused; and (4) that SILVERARCH did something or failed to do something that violates the
12 contract. (See CACI No. 303.)

13 66. PLAINTIFF and SILVERARCH entered into a contract under the Term Sheet and
14 Loan Commitment signed by the Parties.

15 67. The agreement was in writing and provided that SILVERARCH would provide a
16 loan to the PLAINTIFF under the terms described in the Term Sheet.

17 68. PLAINTIFF has completed her obligations under the agreement with
18 SILVERARCH, by paying the required Due Diligence Fee described in the Term Sheet, as well
19 as following all other provision thereunder.

20 69. PLAINTIFF had, at all times, been ready, willing and able to perform all of the
21 conditions of the agreement.

22 70. SILVERARCH failed to perform the duties and obligations as described under
23 the Term Sheet and Loan Commitment.

24 71. SILVERARCH has made a pattern and practice of the unlawful conduct
25 committed against the PLAINTIFF and has committed the same unlawful acts against others.

26 72. PLAINTIFF suffered damages that were actually and proximately caused by
27 SILVERARCH's breach of contract, as described in this Complaint, in an amount no less than
28 \$75,000.00, all paragraphs of which are incorporated here to the extent pertinent as if set forth
here in full.

1 73. As a direct and proximate result of SILVERARCH's conduct, PLAINTIFF
2 incurred damages, as well as attorney fees and expenses in taking action to obtain remedies for
3 SILVERARCH's false representations.

4 **FOURTH CAUSE OF ACTION**

5 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

6 [Common Law]

7 74. PLAINTIFF hereby repeats, re-alleges, and incorporates by reference all of the
8 foregoing and subsequent paragraphs in this Complaint as though these paragraphs were set forth
9 in full herein.

10 75. Every contract imposes upon each party a duty of good faith and fair dealing in
11 the performance of the contract such that neither party shall do anything which will have the
12 effect of destroying or injuring the right of the other party to receive the fruits of the contract.

13 76. SILVERARCH breached the covenant of good faith and fair dealing by acting to
14 injure the PLAINTIFF when they add materially different and additional terms to the Loan
15 Application than defined in the Term Sheet.

16 77. SILVERARCH's breach was wrongful, in bad faith, and unfair, and therefore in
17 violation of SILVERARCHS legal duties.

18 78. PLAINTIFF further alleges that SILVERARCH breached the covenant of good
19 faith and fair dealing when they omitted pertinent information regarding the agreement.

20 79. SILVERARCH's breach of the covenant of good faith and fair dealing was a
21 substantial factor in causing damage and injury to PLAINTIFF.

22 80. As a direct and proximate result of SILVERARCH's unlawful conduct herein
23 alleged, PLAINTIFF has suffered damages in an amount that exceeds \$75,000.00.

24 81. SILVERARCH has made a pattern and practice of the unlawful conduct
25 committed against the PLAINTIFF and has committed the same unlawful acts against others.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF respectfully prays for relief and judgment against the Defendants
28 as follows:

1. That the court award PLAINTIFF general damages;
2. That the court award PLAINTIFF punitive;
3. That the court award PLAINTIFF consequential damages;

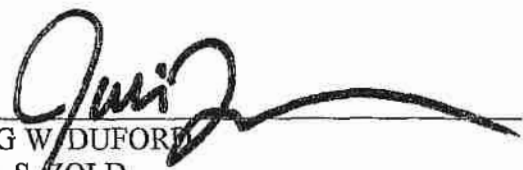
COMPLAINT FOR DAMAGES

- 1 4. Reasonable attorney's fees according to proof;
2 5. For costs of suit incurred herein; and
3 6. For such other and further relief as this Court deems just and proper.

4 Dated: October 3, 2019

Respectfully submitted:

5
6 DUFORD LAW, LLP

7
8 By: 
9 CRAIG W. DUFORD
10 JULIA S. ZOLD
11 Attorneys for Plaintiff MCKINNEY CAPITAL
12 & ADVISORY, LLC
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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all claims so triable.

Dated: October 3, 2019

Respectfully submitted:

DUFORD LAW, LLP

By: 

CRAIG W. DUFORD

JULIA S. ZOLD

Attorneys for Plaintiff MCKINNEY CAPITAL
& ADVISORY, LLC

Exhibit A



Origination • Servicing • Advisory Services

March 1, 2019

Damian McKinney
McKinney Capital and Advisory

Via Email: c/o: Chris Ly; Cly@mcKinneycapital.com

Bruce H. Block; blockb@jmb.com

Dear Mr. McKinney:

Based on Silver Arch Capital Partner's ("Lender") preliminary evaluation of your loan request, Lender will initiate due diligence for a loan to McKinney Capital and Advisory ("Borrower") in the principal amount of Six Million Dollars (\$6,000,000) based on the terms of this Term Sheet. The general terms and conditions for the closing of any loan are as follows:

This Term Sheet will expire on March 1, 2019, time being of the essence, if not executed prior thereto.

Borrower: McKinney Capital and Advisory, a special purpose bankruptcy remote entity.

Guarantor: Damian McKinney, and any other non-passive entities or individuals having a 10% or greater interest in the borrower, shall provide guarantee of standard non-recourse carveouts only, including a covenant to not contest Lender's enforcement of its right in the event of default.

Requested Total Loan Amount: \$6,000,000

Loan Purpose/Use Of Proceeds: Refinance, pay leasing commissions, and construction overages

Collateral: The real property and improvements thereon located at 414-420 Lesser Street, Oakland, CA more particularly described on Schedule "A" attached hereto (the "Property"). The Loan shall be evidenced by a full set of loan documents including a Loan Agreement, Note and first mortgage or deed of trust covering the Property unless otherwise agreed to, each mortgage or deed of trust shall grant Lender a first priority security interest in the Property and related furniture, fixtures and equipment and all escrow and reserve accounts and a first priority assignment of leases, rents, profits, accounts receivable, other revenues, permits, licenses and contracts with respect to the Property, and assignment of the ownership interests in the borrowing entity.

Loan Term: 2 year(s), Interest Only.

Extension Option(s): Two 6 month extensions, upon payment of 1/2% of the loan amount per extension and provided the loan is not in default.

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www.silverarchcp.com

TS4848_R5

Applicant's Initials

Handwritten initials, possibly "JMB", in dark ink.

Origination Fee: Two Percent (2%) of the loan amount.

Interest Rate: The interest rate for the term of the Loan shall be (i) Nine and One Half percent Percent (9.5%)

Prepaid Interest: TBD

LTV Ratio: Fifty-five Percent (55%)

Projected Closing Date: 4/4/2019

Minimum Interest: The Loan may be prepaid at any time upon payment of interest on the loan through the 9th month of the Term.

Brokerage: Any fees, commissions, etc. due and owing to any broker related to this transaction shall be the responsibility of Borrower and shall be paid by Borrower at or prior to closing of the Loan pursuant to the corresponding agreement.

Due Diligence: This Term Sheet and all of its terms and conditions will become effective only upon delivery to this office of a signed copy of this Term Sheet accompanied with a Due Diligence Deposit in the amount of Forty Thousand Dollars (\$40,000.00), Lender will then provide a Due Diligence checklist. The Due Diligence Deposit will be utilized for Lender's site inspection, appraisal, underwriting, and evaluation procedures. The unused portion of the Due Diligence deposit would be credited toward the Origination Fee at closing. In the event Lender does not perform its obligations hereunder, the Due Diligence Deposit would be refunded to Borrower.

Expenses: Borrower agrees to indemnify, defend, and hold harmless Lender against any and all actual and reasonable expenses incurred with this transaction, including but not limited to legal fees.

Loan Offer: Lender will underwrite the market value of the proposed collateral utilizing a national appraisal firm. Lender will then present Borrower with a Loan Offer indicating the amount Lender is willing to lend based on the value of proposed Collateral and the terms herein.

In the event Lender provides a Loan Offer consistent with terms and conditions herein, the Due Diligence Deposit is non-refundable.

Upon acceptance of the Loan Offer a Loan Application will be executed by Borrower, upon which an additional 1/2% of the loan amount would be due and payable; the unused portion of such amount to be fully credited toward the Origination Fee at closing, or in the event Borrower elects not to close, would be credited toward the breakup fee hereunder. Upon



engagement of counsel, a closing checklist, detailing all items, documents and deliveries necessary to close the Loan will be provided.

The Loan closing shall be subject to full loan documentation and subject to complete and acceptable due diligence including, but not be limited to the following:

- Title Insurance
- Alta Survey
- Insurance (Hazard, Liability, Flood)
- Opinion letter of Borrower Counsel
- Engineering/Structural review
- Environmental (Phase I / Phase II)
- Borrower's & Guarantor's financials (financials and the three most recent federal tax returns)

Governing Law: This Term Sheet and the other Loan Documents (except the mortgage or deed of trust which shall be governed by the law of the jurisdiction of the realty), shall be governed by and construed in accordance with the internal substantive laws of the State of New York, without regard to the choice of law principles of such state.

Choice of Forum: Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New York for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and Silver Arch Capital Partners under any theory of law in connection with, out of, or otherwise relating to this Term Sheet and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this Term Sheet, Borrower and Guarantor(s) authorize Silver Arch Capital Partners to obtain credit information on Borrower and Guarantor.

Miscellaneous: Borrower acknowledges and represents that this is a commercial transaction not subject to any state's consumer protection laws. Borrower understands that Lender would not be proceeding with Borrower without this representation.

Committee Approval: The undertaking of the Lender to make the Loan is subject to, among other things, the approval of its loan/credit committee.

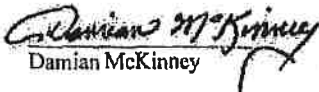
Break-up Fee: Borrower agrees to pay Lender a break-up fee of 1/2% of the Loan amount in the event Borrower accepts the Loan offer and fails to close the Loan with Lender due to no fault of Lender.

Lenders Right to Assign: In addition, the Borrower acknowledges and agrees that the Lender may sell, assign, hypothecate, pledge or otherwise transfer all or any portion of the Loan to a third party prior to, at or after the Loan closing.


Disclaimer: This Term Sheet is based upon preliminary information and loan request provided by Borrower. Lender has relied on all the information provided by Borrower as being true and correct in all respects. This Term Sheet shall be non-binding with the exception of the Break-up Fee, indemnification against expenses, and Due Diligence charges above. This

Term Sheet is not a loan Commitment. Final terms and conditions of any Loan will be subject to, among other things, Lender's due diligence, legal review including documentation, credit review procedures, and internal approvals, customary for a transaction of this nature in Lender's sole reasonable discretion. All due diligence and reports, including without limitation, title, engineering, environmental, and zoning must be acceptable to Lender and its counsel in all respects. Borrower agrees to indemnify and hold harmless the Lender and its officers, directors, employees, affiliates, advisors, agents and controlling persons from any and all losses, claims, damages and liabilities whether direct, indirect or consequential damages of any kind. This Term Sheet and its terms are submitted on a confidential basis and shall not be disclosed except to investors and advisors of Borrower who may be bound by such confidentiality arrangements. This Term Sheet and any subsequent documentation pertaining to any Loan shall be governed by the laws of the State of New York.

ACCEPTED AND AGREED
McKinney Capital and Advisory

BY:  3/6/2019
Damian McKinney Date

Silver Arch Capital Partners, LLC

BY:  3/7/19
Jonathan Weiner Date
Senior Director

Schedule "A"

414-420 Lesser Street, Oakland, CA

The total property is 61,500 Sq. Ft. and is 89% leased out to cannabis tenants.

DM

Exhibit B



March 26, 2019

McKinney Capital and Advisory
414 Lesser St.
Oakland, CA
Attention: Damian McKinney

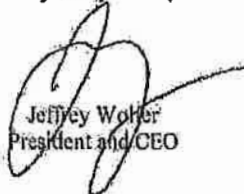
Via Email: c/o Mr. Chris Ly: CLy@mckinneycapital.com
Cc: Mr. Bruce Block: blockb@jmb.com

Dear Mr. McKinney :

As provided in the Term Sheet dated March 1, 2019 this shall confirm that the amount of the loan Silver Arch Capital Partners is willing to make based on the valuation of the collateral is \$6,000,000 based on the terms, conditions, and requirements of the Term Sheet.

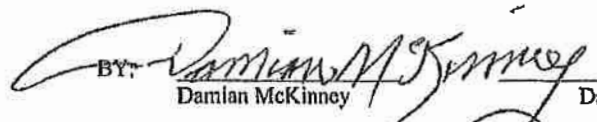
Please sign below acknowledging the above and return by March 29, 2019.

Very Truly Yours;



Jeffrey Wolter
President and CEO

ACCEPTED AND AGREED
McKinney Capital.

BY:  3/26/19
Damian McKinney Date

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www.silverarchcp.com

Exhibit C



Origination • Servicing • Advisory Services

March 27, 2019

Silver Arch Capital Partners, LLC
411 Hackensack Avenue, Suite 803
Hackensack, NJ 07601

Attention: Jeffrey Wolfer

Re: Proposed \$6,000,000 Financing on 414-420 Lesser St., Oakland, CA (the "Property")

Dear Mr. Wolfer:

The purpose of this letter is to set forth the terms and conditions intended to be submitted to the investment committee of Silver Arch Capital Partners, LLC (together with its affiliates and their respective successors and assigns hereinafter collectively being referred to as "Lender") in connection with the proposed loan (the "Loan") requested by the undersigned ("Applicant"). The terms and conditions of the Loan to be considered shall be those set forth in this letter and the term sheet attached hereto (collectively, this or the "Application").

Applicant will, contemporaneously with the execution of this Application, pay to Lender a good faith deposit of \$30,000, (the "Good Faith Deposit"); to be applied by Lender to cover fees and expenses incurred by Lender in connection with this Application and/or the Loan (the "Expenses"). Applicant shall remit to Lender promptly upon demand any additional amounts required by Lender, which amounts shall be deemed a part of the Good Faith Deposit and absent which Lender may elect not to proceed with diligence and/or underwriting of the Loan. The Good Faith Deposit and any such additional amounts shall be delivered to Lender pursuant to the instructions set forth on Exhibit B hereto or as otherwise directed by Lender. Applicant agrees to indemnify, defend, and hold Lender harmless against any Expenses. Expenses will include, without limitation, external legal counsel; audit services; travel; background and credit checks; lease reviews and underwriting and due diligence costs including third party fees incurred for insurance, zoning, appraisal, environmental and structural engineering reviews and reports. The obligations in this paragraph will survive in the event this Application is terminated for any reason.

Applicant agrees to cooperate with Lender and its counsel, agents and representatives, and provide Lender and its counsel, agents and representatives with all requested information in order that Lender may conduct its due diligence investigation. Applicant acknowledges that Lender will be relying on information supplied by Applicant in evaluating this Application and Applicant agrees to provide any updates to information previously provided on a timely basis and to disclose all material information concerning Applicant, Borrower or any of its principals, the Property, or any of the tenants of the Property. Applicant further agrees that any reviews, decisions, approvals, or acceptance to be made by Lender under this Application may be made by Lender in its sole and absolute discretion.

Applicant hereby acknowledges and represents that it is working solely with Lender to procure financing for the Property. If Applicant fails to close with Lender or has made any material

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Applicant's Initials _____

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misrepresentation or omitted any material fact, then in addition to the Good Faith Deposit, the Applicant shall pay to Lender upon demand, a Break-Up Fee equal to 1% of the Loan Amount as liquidated damages for the time and effort expended by Lender in connection with this Application, it being expressly acknowledged and agreed that Lender's actual damages in such instance will be impossible to calculate. This paragraph shall survive any termination of this Application.

Applicant understands and acknowledges that Lender's agreement to make the Loan is subject to receipt of approval from Lender's internal investment committee and Borrower's fulfillment of the Closing Conditions, each in form and substance satisfactory to Lender. Applicant acknowledges and agrees that this Application does not set forth all of the terms and conditions of the proposed Loan, but is merely intended to serve as an outline of the major points of understanding between the parties that will be set forth in the final Loan Documents. Accordingly, this Application is subject to revision by Lender and cannot be construed for any purpose as a commitment by Lender to fund any loan under these or any other terms. Further, no such offer or commitment may be made orally by any employee, officer, agent, or representative of Lender, and none should be implied based on any statements by, or conduct of, any such persons.

This Application shall be governed by, construed, and interpreted in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws. Applicant submits to the exclusive jurisdiction of the courts of the State of New York for the resolution of any dispute in connection with this Application. Both parties waive any right to a jury trial.

Applicant acknowledges its acceptance of the terms and conditions relating to the Loan described in this Application by (i) executing below, (ii) initialing each page of this Application where indicated, (iii) completing the certification attached hereto as Exhibit C for each Key Principal and each borrower and (iv) submitting each of the same to Lender along with the Good Faith Deposit. Applicant understands that failure to do so within five (5) days after the date hereof shall render this Application null and void.

Sincerely,

McKinney Capital and Advisory

By: _____

Name: _____

Title: _____

Date: _____



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March 27, 2019

Property Address: 414-420 Lesser St., Oakland, CA

Property Type: Industrial

Interest of Borrower: Fee Simple

Purpose of Financing: Refinance, TI/LC

Lender: Silver Arch Capital Partners, LLC (or an affiliate thereof), and its successors and/or assigns.

Borrower: Subject to due diligence, McKinney Capital Advisory, a special purpose bankruptcy remote entity, to be more specifically identified in the Loan Documents (defined below).

Borrower Structure: An existing or to be a newly formed single-purpose limited liability company or limited partnership acceptable to Lender.

Key Principal: Damian McKinney and any other entities or individuals having a 10% or greater interest in the Borrower.

Manager: Manager will be required to subordinate its rights under any management agreement to the Loan. The loan documents will provide that upon the occurrence of certain events Borrower may be required to terminate and replace Manager with an independent third party manager acceptable to Lender.

Loan Amount: Up to \$6,000,000 subject to adjustment to comply with the terms and conditions set forth in this Application.

Limitations on Loan Amount: On the date of Closing, the Loan shall have a loan-to-value ratio (the "LTVR") of no greater than 55 %.

Collateral: Lender shall have a first priority lien on the Property, including a first priority assignment of all leases, rents, issues and profits and a first priority and perfected security interest in all personal property, licenses, permits, contract rights, general intangibles and other assets of Borrower used in connection with the operation, maintenance and management of the Property, and assignment of the ownership interests in the Borrowing entity, to be evidenced and secured by Lender's standard loan documents (the "Loan Documents").

AS4849_R1

Applicant's Initials _____

Continental Plaza, 411 Hackensack Avenue, Suite 803, Hackensack, NJ 07601 • 201-254-2555

www.silverarchcp.com

Origination Fee: 2% of the Loan Amount.

Prepaid Interest: 12 months to be paid at closing.

Minimum Interest: The Loan may be prepaid at any time upon payment of interest on the loan through the 9th month of the term.

Maturity Date: One year after the Closing.

Extension Options: Up to two (2) extensions of six months each subject to: (i) no event of default existing; (ii) receipt by Lender of no less than 30 days irrevocable written notice of Borrower's intent to exercise the applicable Extension Option, (iii) the Property then having an LTVR of no greater than 55 % (iv) Borrower depositing initial or additional amounts into any reserve accounts then being required by Lender, (v) receipt by Lender of a ½ % extension fee for each extension; and (vi) such other requirements as are then standard for Lender.

Interest Rate: Nine and one half percent (9.5%) with interest payable monthly in arrears, calculated on an actual/360 basis.

Amortization: None.

Cash Management: Borrower will be required to establish an account (the "Clearing Account") at a bank acceptable to Lender with a long-term unsecured debt rating of at least "A" (or the equivalent) and a short-term unsecured debt rating of at least "A-1" (or the equivalent) from at least two (2) rating agencies (the "Clearing Bank"). Prior to Closing, Borrower shall be required to notify each tenant at the Property and each account debtor to remit all amounts due with respect to the Property directly to the Clearing Account during the term of the Loan.

The Clearing Account shall be under the sole control of the Lender. Provided no Sweep Event (as defined below) has occurred, funds deposited into the Clearing Account will be transferred to an account of Borrower. Upon the occurrence of a Sweep Event, all funds deposited into the Clearing Account will be transferred to an account of Lender (the "Collection Account"), to be applied by Lender in accordance with the terms of the Loan Documents.

A "Sweep Event" will occur: (i) if an event of default occurs under the Loan or the Property management agreement, (ii) if the DSCR for the Property for the prior 2 month period falls below 90% of the DSCR at the time of the Closing, (iii) if any tenant occupying more than 10% of the Property (either physical or economic occupancy) ceases to conduct its normal business operations at substantially all of its leased premises (iv) if any tenant occupying more than 10% of the Property (either physical or economic occupancy) (or such tenant's parent, if applicable) becomes insolvent, files for bankruptcy or has its senior unsecured debt rating fall below "BBB-" by Standard & Poor's ratings services (or the equivalent of such rating by Moody's).

Notwithstanding the foregoing, upon an event of default, all funds in the Clearing Account will be transferred to the Collection Account and Lender may apply any such funds in such order, proportion and priority as Lender may determine.

Reserves:

Borrower will be required to establish at Closing and fund and maintain during the term of the Loan ongoing reserves for real estate taxes and property and liability insurance premiums. Such reserves will be held by Lender as additional collateral for the Loan and applied as determined by Lender.

Closing:

The closing of the Loan shall occur no earlier than the first business day after Applicant and/or Borrower have satisfied all of Lender's requirements, including the Closing Conditions and any other terms and conditions set forth in this Application. Lender will work in good faith to complete the Closing by April 20, 2019 ; provided that Lender shall not be liable to Borrower for any failure of Lender to achieve a Closing by such date.

Closing Conditions:

Lender's conditions to closing the Loan shall include the following:

- (a) review and approval of Borrower's organizational documents and the credit history of Applicant, Manager, Key Principal and each of their principals;
- (b) delivery of a FIRREA appraisal from an MAI appraiser to be ordered by Lender at Borrower's expense and satisfaction of any assumptions therein;
- (c) delivery of a Phase I environmental report to be ordered by Lender at Borrower's expense addressing all environmental risks pursuant to Lender's scope of work, including, without limitation, asbestos, mold, radon and lead-based paint and, if required by Lender, a Phase II report and/or the implementation of an Operations and Maintenance Plan for any necessary remediation;
- (d) delivery of a structural engineering report to be ordered by Lender at Borrower's expense and, if the Property is located in a seismic zone of 3 or 4, a seismic report including a probable maximum loss analysis;
- (e) the absence of any event or development occurring or any information being received with respect to the Property, Applicant, Borrower, Manager, any Key Principal or any of their respective principals, or any tenants at the Property, prior to the date on which the Loan closing occurs which could, in Lender's opinion, materially and adversely affect the management, the net operating income or value of the Property or the Loan or the ability of Borrower to make any payments that would be required under the Loan;
- (f) execution and delivery of the Loan Documents and any related settlement statement(s) and other closing documentation;

- (g) delivery from Applicant's counsel of all legal opinions required by Lender;
- (h) delivery of copies of all commercial leases;
- (i) delivery of original tenant estoppels and subordination agreements acceptable to Lender from all commercial tenants and from any ground lessor;
- (j) delivery of financial statements (including tax returns) from Applicant and each Key Principal or as otherwise requested by Lender for both the last concluded financial year and last concluded financial quarter preceding the date of this Application, which financial statements of Applicant shall be prepared and reviewed by an independent accounting firm acceptable to Lender;
- (k) delivery of valid permanent certificates of occupancy and zoning confirmation letters or zoning reports from all applicable authorities with respect to all of the improvements constructed upon the Property;
- (l) delivery of evidence of insurance as more specifically set forth in "Insurance" below;
- (m) receipt of a policy of mortgagee title insurance and an updated certified survey, each in compliance with the terms and conditions listed on Exhibit A attached hereto;
- (n) no material adverse change in market conditions having occurred after the date of this Application and prior to Closing;
- (o) delivery of any other information requested by Lender and Lender's completion of due diligence and underwriting on Borrower, the Property and Key Principal; and
- (p) satisfaction of any other closing conditions customary for loans similar to the Loan;
- (q) confirmation of the cost to complete the proposed improvements (if applicable);
- (r) No material misrepresentation by or on behalf of Borrower.

Servicer:

To be appointed by Lender. The cost of such servicer (which cost shall not exceed 5 basis points) shall be paid by Borrower.

Loan Sale Cooperation:

Lender reserves the right to transfer the Loan to a trust or other similar securitization vehicle in a public or private offering or otherwise effectuate a public or private sale of the Loan (any of the foregoing, a "Sale"). Borrower agrees to cooperate with Lender to effectuate a Sale by, without limitation,

making amendments and/or modifications to the Loan Documents and/or Borrower's organizational documents that do not have a material adverse effect on Borrower's rights and obligations thereunder including, without limitation, creating a mezzanine loan, severing Borrower's promissory note and creating one or more senior and/or subordinate notes (i.e., an A/B or A/B/C structure), creating additional components of the Loan, reducing the number of components of the Loan, revising the interest rate of any components (provided that the weighted average of the interest rates on all such components does not exceed the Interest Rate), reallocating the principal balances of the components, or eliminating the component structure and/or the multiple note structure of the Loan (including the elimination of the related allocations of principal and interest payments).

Assignment by Lender: Lender may assign the all or part of the Loan and any agreements pertaining thereto, including this Application, at any time and to any party in its sole discretion.

Other Debt: None permitted.

Reporting: Borrower will provide Lender with, among other things, quarterly certified rent rolls and quarterly and annual income statements and balance sheets (collectively, the "Financial Statements"); provided that until the Loan is included in a Sale, the Financial Statements shall also be provided monthly. The annual Financial Statements will be required to be prepared and reviewed by an independent accounting firm acceptable to Lender.

Recourse Liability: The Loan will be fully recourse to Borrower; and Key Principals shall provide guarantee of standard non-recourse carveouts only, including a covenant to not contest Lender's enforcement of its right in the event of default.

Assignment: None permitted.

Insurance: The Property will be required to be covered by fire and casualty, machine and boiler, business interruption, terrorism, liability and any additional insurance as may be required, all in form and substance satisfactory to Lender.

Brokers: Borrower shall (i) represent to Lender the identity of all brokers, finders or correspondents engaged by Borrower in connection with the Loan, (ii) pay any and all commissions and other similar fees owing in connection with the parties identified in (i) and (iii) indemnify and defend Lender from and against all costs and expenses incurred by Lender as a result of a breach of the foregoing or otherwise in connection with any claim for a brokerage commission or fee made against Lender with respect to the Loan.

Confidentiality: This Application is being delivered with the understanding that neither it nor the substance thereof shall be disclosed by Borrower or any Key Principal or any of their respective affiliates to any third person, except those who are in confidential relationships to any of them (i.e., Borrower's counsel,

accountants and other retained business advisors) or as may be required by law.

Special Conditions:

Borrower acknowledges that this is a commercial transaction not subject to any state's consumer protection laws. Borrower understands that Lender will not proceed without this representation.

Choice of Forum:

Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New York for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and Silver Arch Capital Partners under any theory of law in connection with, out of, or otherwise relating to this Loan Application and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this Loan Application, Borrower and Guarantor(s) authorize Silver Arch Capital Partners to obtain credit information on Borrower and Guarantor.



Origination • Servicing • Advisory Services

EXHIBIT A

TITLE AND SURVEY REQUIREMENTS

I. TITLE REQUIREMENTS:

A title insurance policy with a liability limit not less than the final Loan Amount, insuring the Mortgage as a first lien on the title to the Property and issued by a nationally recognized title insurance company acceptable to Lender. The title insurance policy shall be subject only to such exceptions as shall be approved by, and shall contain such endorsements as may be required by, Lender.

II. SURVEY REQUIREMENTS:

A current title survey of the Property by a licensed or registered land surveyor acceptable to Lender, certified to Lender, its successors and/or assigns and the appropriate title insurance company, which survey and certification shall be in form, scope and substance acceptable to Lender. The title survey shall be prepared in accordance with the Minimum Standard Detail Requirements and Classifications for ALTA/ACSM Land Title Surveys, as adopted in 2011.

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Applicant's Initials _____

EXHIBIT B

GOOD FAITH DEPOSIT DELIVERY INSTRUCTIONS

IF BY WIRE:

Contact: Tony Petruccello, Silver Arch Capital Partners, LLC
Email: tonypetruccello@silverarchcp.com
Phone: 201-254-2558

EXHIBIT C**CERTIFICATION OF PRINCIPAL LITIGATION**

Complete a separate sheet for each general partner, managing member, control party, guarantor, member, limited partner, or shareholder owning equal to or more than 10%, significant shareholder and corporate officer (each, a "Significant Principal"). All questions should be answered for all entities in which each Significant Principal has had an ownership interest.

	<u>YES</u>	<u>NO</u>
1. Have you ever been declared bankrupt or filed a petition or action under any bankruptcy or insolvency laws or had a judgment against you? If yes, please attach a detailed explanation.		
2. Have you ever had a judgment against you? If yes, please attach a detailed explanation.		
3. Have you ever been a principal, partner, shareholder, or member with any direct or indirect ownership interests in an entity that has declared bankruptcy or filed a petition or action under any bankruptcy or insolvency laws? If yes, please attach a detailed explanation.		
4. Have you ever been a guarantor of an entity that has declared bankruptcy? If yes, please attach a detailed explanation.		
5. Have you ever has any claim made against you under a guaranty? If yes, please attach a detailed explanation.		
6. Have you ever had property foreclosed upon or given title or deed in lieu thereof? If yes, please attach a detailed explanation.		
7. Have you ever been a principal, partner, shareholder, or member of an entity that had a property foreclosed upon or given title or deed in lieu thereof? If yes, please attach a detailed explanation.		
8. Have you ever had repossession? If yes, please attach a detailed explanation.		
9. Have you ever requested or received modification of the terms of any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
10. Have you ever been a principal, partner, shareholder, or member of an entity that requested or received modification of the terms of any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
11. Have you ever been in default on or received forbearance on any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
12. Have you ever been a principal, partner, shareholder, or member of an entity that has ever been in default on or received forbearance on any existing mortgage or any other loan? If yes, please attach a detailed explanation.		
13. Have you ever been arrested or convicted of or plead guilty or no contest to a felony or a misdemeanor or are you presently the subject of an arrest, complaint or indictment charging a felony or a misdemeanor? If yes, please attach a detailed explanation.		
14. Are you a co-maker, guarantor, or endorser on a note?		

15. Are you or have you ever been a party to any claim or lawsuit?		
16. Are any of your assets pledged as collateral?		
17. Do you owe any taxes for the years prior to the current year?		
18. Have you been the subject of an IRS audit in the past three years?		
19. Are you a U.S. citizen?		
20. Are you a resident alien?		
21. Have you ever obtained credit under any other name or have been known by any other name in the last 10 years? If yes, list other names or aliases: _____		

The information contained in this certificate and any explanation(s) attached hereto is true, accurate, and complete.

McKinney Capital and Advisory

By: _____
Name:
Title:

Exhibit D



Find What are you looking for?

Near San Diego, CA

1 Complaints

Show All Complaints

Sort By Most Recent

Complaint Type: Problems with Product/Service

Status: Answered ?

05/08/2017



Silver Arch took \$ 80,000 of my money to refinance an existing loan. After 4 months, at the very last minute they decided not to help refinance my loan. They did not indicate until after they were wired an initial \$ 50,000 and later an additional \$ 30,000 'good faith' deposit. After 4 months of encouraging procedures on behalf of Silver Arch representative, they inform me that they will not sign a contract to refinance. In addition, they refused to refund all of my deposit instead offering me just \$ 25,000 back if I signed a gag contract. I feel they are dishonest and their encouragement in proceeding with approval of the loan over 4 months, and the taking of my money while never expressing that I would be refused is criminal. I am disabled and cannot work. I was trying to refinance a business property before I lost it. \$ 80,000 is a tremendous amount of money for me and I had to take it from my Retirement plan which incurred federal penalties for early disbursement. Despite my...

Silver Arch Capital Funding headquartered in New Jersey is under the Kennedy umbrella. Ripped off to the tune of 79,000 of 'due diligence' with a sudden drop of my 'assured' bridge loan. Was told I could get 25,000 back if I signed a Hold harmless agreement. I declined and was fortunate enough to find another broker who found me a Real lender for my needs. I had to "RE-Purchase" my appraisals and surveys as Silver Arch never paid the companies despite the fact that I sent Silver Arch the funds for the work at the time. So the appraisers and surveyors did the work and I paid Silver Arch but.... they were not paid from my due diligence funds paid to Silver Arch. I paid twice. The whole scam that Kennedy/Silver Arch/ Matt Cole and scam attorney Jeff Wolfer are running is horrible. To call it a scam is misleading and too kind, This is racketeering fraud on a corporate financial level. I am suing for my money back.... All of it plus Pain and Suffering. Companies such as Silver Arch and Kennedy who prey on the most desperate of American businesses must be exposed as should their minions Jeff Wolfer and Matt Cole. Voices in scammed unity will be heard if we all try. If not for us then for the Greater Good.

Michele Mittelbronn
mittelbronn160@gmail.com

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): McKinney Capital and Advisory Group LLC		
DEFENDANT(S): Silver Arch Capital Partners LLC		
SHORT TITLE: MCKINNEY CAPITAL & ADVISORY LLC VS SILVER ARCH CAPITAL PARTNERS LLC [IMAGED]		
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER: 37-2019-00052881-CU-FR-CTL

Judge: Kenneth J Medel

Department: C-66

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/07/2019

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00052881-CU-FR-CTL

CASE TITLE: McKinney Capital & Advisory LLC vs Silver Arch Capital Part

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W Broadway
MAILING ADDRESS: 330 W Broadway
CITY AND ZIP CODE: San Diego, CA 92101-3827
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7066

PLAINTIFF(S) / PETITIONER(S): McKinney Capital and Advisory Group LLC

DEFENDANT(S) / RESPONDENT(S): Silver Arch Capital Partners LLC

MCKINNEY CAPITAL & ADVISORY LLC VS SILVER ARCH CAPITAL PARTNERS LLC [IMAGED]

**NOTICE OF CASE ASSIGNMENT
and CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

37-2019-00052881-CU-FR-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Kenneth J Medel

Department: C-66

COMPLAINT/PETITION FILED: 10/04/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	07/10/2020	08:30 am	C-66	Kenneth J Medel

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

EXHIBIT B

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)

2 jte@wlelaw.com

Davin H. Kono (SBN 312382)

3 dkono@wlelaw.com

402 West Broadway, Suite 1800

San Diego, California 92101

(619) 231-4844

5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*

Silver Arch Capital Partners LLC

7
8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
12 LLC, a California limited liability company,

13 Plaintiff,

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
16 LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

17 Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

NOTICE OF FILING OF REMOVAL

Judge: The Honorable Kenneth J. Medel
Dept: C-66

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on November 20, 2019, Defendant Silver Arch Capital Partners
4 LLC filed a Notice of Removal, pursuant to 28 U.S.C. § 1441 *et seq.*, in the above-captioned action
5 removing this action to the United States District Court for the Southern District of California.

6 PLEASE TAKE FURTHER NOTICE that Defendant, upon filing the Notice of Removal in the
7 office of the Clerk of the United States District Court for the Southern District of California, also filed
8 copies thereof with the Clerk of the Superior Court of the State of California, County of San Diego, to
9 effect removal pursuant to 28 U.S.C. § 1446.

10 A copy of the Notice of Removal is annexed hereto.

11
12 Date: November 20, 2019

WRIGHT, L'ESTRANGE & ERGASTOLO

13 *Attorneys for Defendant*
14 *Silver Arch Capital Partners LLC*

15 By: 
16 Joseph T. Ergastolo

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

12 Plaintiff,
13

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,
16

Defendants.
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Case No.: 37-2019-00052881-CU-FR-CTL

PROOF OF SERVICE

1 I am a resident of the State of California over the age of 18 years, and not a party to the within
2 action. My business address is 402 West Broadway, Suite 1800, San Diego, CA 92101. On **November**
3 **20, 2018** I served the within documents:

4 **NOTICE OF FILING OF REMOVAL**

5 XX U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee
6 named herein for collection and first class mailing on the below indicated date. I am readily familiar
7 with Wright, L'Estrange & Ergastolo's practices for collection and processing of correspondence for
8 mailing with the United States Postal Service.

9
10 DUFORD LAW, LLP
11 Craig W. Duford, State Bar No. 305823
12 Julia S. Zold, State Bar No. 324847
13 3611 Fifth Ave.
San Diego, CA 92103
Ph: (619) 546-4291
Fax: (619) 354-2449

14 Executed **November 20, 2019** at San Diego, California. I declare under penalty of perjury under
15 the laws of the State of California that the foregoing is true and correct.

16 
17 Tina R. Rynberg

1 WRIGHT, L'ESTRANGE & ERGASTOLO

2 Joseph T. Ergastolo (SBN 137807)

3 jte@wlelaw.com

4 Davin H. Kono (SBN 312382)

5 dkono@wlelaw.com

6 402 West Broadway, Suite 1800

7 San Diego, California 92101

8 (619) 231-4844

9 (619) 231-6710 (Facsimile)

10 *Attorneys for Defendant*

11 *Silver Arch Capital Partners LLC*

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

11/20/2019 at 10:09:00 AM

Clerk of the Superior Court
By Megan Dietenhofer, Deputy Clerk

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 MCKINNEY CAPITAL &
15 ADVISORY GROUP, LLC, a
16 California limited liability company,

17 Plaintiff,

18 v.

19 SILVER ARCH CAPITAL
20 PARTNERS LLC, a New Jersey limited
21 liability company; and DOES 1 through
22 50, inclusive,

23 Defendants.

Case No.

**CERTIFICATE OF SERVICE OF
NOTICE TO ADVERSE PARTY OF
REMOVAL TO FEDERAL COURT**

1 I, the undersigned, am a member of the bar of this Court, and counsel for
2 Defendants herein, and I hereby certify that on **November 20, 2019**, I served true and
3 correct copies of the following document(s):

4 **CIVIL CASE COVER SHEET**
5 **NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT**

6 XX U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for
7 each addressee named herein for collection and first class mailing on the below indicated
8 date. I am readily familiar with Wright, L'Estrange & Ergastolo's practices for collection
9 and processing of correspondence for mailing with the United States Postal Service.
10

11 DUFORD LAW, LLP 12 Craig W. Duford, State Bar No. 305823 13 Julia S. Zold, State Bar No. 324847 14 3611 Fifth Ave. 15 San Diego, CA 92103 16 Ph: (619) 546-4291 17 Fax: (619) 354-2449 18 <i>Attorneys for Plaintiff McKinney Capital</i> 19 <i>& Advisory Group, LLC</i>	
--	--

17 Executed on **November 20, 2019**.

19 /s/ Joseph T. Ergastolo
20 Joseph T. Ergastolo
21 jte@wlelaw.com
22
23
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27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 305823/ 323363 NAME: Craig DuFord/ Rio Schwarting FIRM NAME: DuFord Law, LLP STREET ADDRESS: 3611 Fifth Ave. CITY: San Diego STATE: CA ZIP CODE: 92103 TELEPHONE NO.: (619) 546-4291 FAX NO.: (619) 354-2449 E-MAIL ADDRESS: Craig@dufordlaw.com/ Rio@dufordlaw.com ATTORNEY FOR (name): MCKINNEY CAPITAL & ADVISORY, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/03/2019 at 05:00:00 PM Clerk of the Superior Court By Jacqueline J. Walters, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division - Civil	
Plaintiff/Petitioner: MCKINNEY CAPITAL & ADVISORY, LLC Defendant/Respondent: SILVER ARCH CAPITAL PARTNERS, LLC	
REQUEST FOR <input checked="" type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment (Application) <input type="checkbox"/> Court Judgment	
CASE NUMBER: 37-2019-00052881-CU-FR-CTL	
Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.) (see CIV-105)	

1. TO THE CLERK: On the complaint or cross-complaint filed
- a. on (date): 10/21/2019
- b. by (name): MCKINNEY CAPITAL & ADVISORY, LLC
- c. ☒ Enter default of defendant (names):
 SILVER ARCH CAPITAL PARTNERS, LLC
- d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):
 Manzana Energy, Inc., DBA Manzana Turf, Art Castañares, and Does 1-100
 (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
- e. ☐ Enter clerk's judgment
- (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
 ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
- (2) ☐ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
- (3) ☐ for default previously entered on (date):
2. **Judgment to be entered.**
- | | <u>Amount</u> | <u>Credits acknowledged</u> | <u>Balance</u> |
|------------------------------|---------------|-----------------------------|----------------|
| a. Demand of complaint | \$ | \$ | \$ |
| b. Statement of damages* | | | |
| (1) Special | \$ | \$ | \$ |
| (2) General | \$ | \$ | \$ |
| c. Interest | \$ | \$ | \$ |
| d. Costs (see reverse) | \$ | \$ | \$ |
| e. Attorney fees | \$ | \$ | \$ |
| f. TOTALS | \$ | \$ | \$ |
- g. **Daily damages** were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____
 (* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)
3. ☐ (Check if filed in an unlawful detainer case.) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: December 3, 2019

Rio Schwarting

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT
USE ONLY**

- (1) ☐ Default entered as requested on (date):
- (2) ☒ Default NOT entered as requested (state reason): SEE NOTICE TO FILING PARTY

Clerk, by _____, Deputy

Page 1 of 2

Plaintiff/Petitioner: McKinney Capital & Advisory, LLC
 Defendant/Respondent: Silver Arch Capital Partners, LLC

CASE NUMBER:
 37-2019-00052881-CU-FR-CTL

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☒ did not for compensation give advice or assistance with this form. If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state:

- a. Assistant's name: _____ c. Telephone no.: _____
 b. Street address, city, and zip code: _____ d. County of registration: _____
 e. Registration no.: _____
 f. Expires on (date): _____

5. ☒ **Declaration under Code Civ. Proc., § 585.5 (for entry of default under Code Civ. Proc., § 585(a)).** This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
 b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
 c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):
 b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
 (1) Mailed on (date): December 3, 2019
 (2) To (specify names and addresses shown on the envelopes):
 Joseph T. Ergastolo and Davin H. Kono, 402 W. Broadway,
 Suite 1800, San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: December 3, 2019

Joel Feldman

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. **Memorandum of costs (required if money judgment requested).** Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$
 b. Process server's fees \$
 c. Other (specify): \$
 d. \$
 e. **TOTAL** \$

f. ☐ Costs and disbursements are waived.

g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 3, 2019

Rio Schwarting

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. **Declaration of nonmilitary status (required for a judgment).** No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code section 400(b).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 3, 2019

Rio Schwarting

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig DuFord (SBN:305823); Rio Schwarting (SBN:323363) 3611 Fifth Avenue, San Diego, California 92103 TELEPHONE NO.: (619) 546-4291 FAX NO. (Optional): (619) 354-2449 E-MAIL ADDRESS (Optional): Craig@Dufordlaw.com/ Rio@Dufordlaw.com ATTORNEY FOR (Name): MCKINNEY CAPITAL & ADVISORY, LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/03/2019 at 05:00:00 PM Clerk of the Superior Court By Jacqueline J. Walters, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division - Civil	
PETITIONER/PLAINTIFF: MCKINNEY CAPITAL & ADVISORY, LLC RESPONDENT/DEFENDANT: SILVER ARCH CAPITAL PARTNERS, LLC	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: 37-2019-00052881-CU-FR-CTL

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
- My residence or business address is:
3611 Fifth Avenue, San Diego, California 92103
- On (date): **12/03/2019** I mailed from (city and state): **San Diego, California**
 the following **documents** (specify):
Request for Entry of Default Against the Defendant (CIV-100)

☐ The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).

- I served the documents by enclosing them in an envelope and (check one):
 - ☒ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- The envelope was addressed and mailed as follows:
 - Name** of person served: **Joseph T. Ergastolo and Davin H. Kono**
 - Address** of person served:
402 W. Broadway, Suite 1800, San Diego, California 92101

☐ The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **12/03/2019**

Joel Feldman

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

**SUPERIOR COURT OF CALIFORNIA
SAN DIEGO
330 West Broadway
San Diego, CA 92101
(619) 450-7275**

NOTICE TO FILING PARTY

McKinney Capital & Advisory LLC vs Silver Arch Capital Partners LLC [IMAGED]

Case Number: 37-2019-00052881-CU-FR-CTL

We are unable to process the attached Request for Entry of Default (NOT ENTERED) for the reasons indicated below:

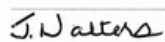
See question #6(b)(2) does not state the defendant name as being mailed a copy of the default. Proof of Service of Summons is defective. Question 3(b) does not list the relationship to the party in 3(a), and the proof of service is not dated.

Please enclose a self-addressed stamped envelope to expedite receipt of returned papers.

Papers returned to: McKinney Capital and Advisory Group LLC

Date: 12/06/2019

Clerk of the Court,


J. Walters

Deputy

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

12 Plaintiff,
13

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

16 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/16/2019 at 09:12:00 AM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Case No.: 37-2019-00052881-CU-FR-CTL

**DEFENDANT'S EX PARTE APPLICATION TO
EXTEND TIME TO RESPOND TO
PLAINTIFF'S COMPLAINT AND MERITS
DISCOVERY; DECLARATION OF JOSEPH T.
ERGASTOLO IN SUPPORT THEREOF**

Date: December 17, 2019
Time: 8:30 a.m.
Judge: The Honorable Kenneth J. Medel
Dept: C-66

1 Pursuant to California Rules of Court rule 3.1200, et seq., Defendant Silver Arch Capital Partners
2 LLC (“Defendant”), applies to the Court *ex parte* for an order granting Defendant: (1) a fifteen (15) day
3 extension to respond to Plaintiff McKinney Capital & Advisory, LLC’s (“Plaintiff”) Complaint; and (2)
4 a thirty (30) day extension to respond to Plaintiff’s merits discovery.

5 Plaintiff filed the Complaint in state court on October 4, 2019 (Declaration of Joseph T. Ergastolo
6 (“JTE Decl.”) at ¶ 2; Register of Action “ROA” # 1). The contract that is the basis of Plaintiff’s
7 Complaint contains choice-of-law and venue provisions for New York (JTE Decl. at ¶ 3; ROA # 1, Ex.
8 A at p. 3). Defendant was served with the Summons and Complaint on October 21, 2019 (JTE Decl. at
9 ¶ 2). Defendant timely filed a Notice of Removal of Action to Federal Court on November 20, 2019
10 (id. at ¶ 4; ROA # 15). Judge M. James Lorenz of the United States District Court for the Southern
11 District of California issued an order (“Order”) remanding the action to state court on November 21,
12 2019 (JTE Decl. at ¶ 5, Ex. A). The Order concludes that Defendant had not established complete
13 diversity because the removal petition did not identify the citizenship of each of the members of the
14 Plaintiff and Defendant, both of which are limited liability companies (id.).

15 In the absence of an extension, Defendant’s response to the Complaint is due thirty (30) days
16 after the Court’s receipt of the remand order, or December 23, 2019. Cal. Civ. Proc. Code § 430.90.

17 On November 25, 2019, counsel for Defendant contacted counsel for Plaintiff asking him to
18 identify each of Plaintiff’s member’s state of citizenship (id. at ¶ 6). This information is vital for removal
19 purposes. Plaintiff’s counsel refused to provide the requested information (id.). Later that day,
20 Defendant personally served two (2) special interrogatories on Plaintiff, for the limited purpose of
21 determining whether diversity jurisdiction existed for purposes of removal (id. at ¶ 7). Plaintiff’s
22 responses to Defendant’s two (2) special interrogatories are due on December 26, 2019. Those responses
23 will dictate whether this case is removable (id.).

24 Defendant requests additional time so that it can obtain the diversity discovery and remove the
25 matter to federal court, if appropriate.

26 On November 14, 2019, prior to Defendant’s removal, Plaintiff served on Defendant form
27 interrogatories, special interrogatories, requests for production of documents, and requests for
28 admissions (collectively, “Merits Discovery”) (id. at ¶ 8). The Merits Discovery requests information

1 pertaining to substantive issues in the lawsuit (id.). In the absence of an extension, Defendant's response
2 to the Merit's Discovery is due on December 19, 2019.

3 On December 3, 2019, Plaintiff filed a request for entry of default against Defendant (ROA #
4 19). The request was rejected by the Court (ROA # 21). The default request should never have been
5 filed because Defendant's response to Plaintiff's Complaint is not due until December 23, 2019. Cal.
6 Civ. Proc. Code § 430.90. When the prematurely filed request for dismissal was brought to his attention,
7 Plaintiff's counsel stated that he was unaware of the code section which provides the response time after
8 remand, and requested that defense counsel provide him the authority, which he did (JTE Decl. ¶ 10,
9 Ex. B).

10 Good cause exists for an extension of time to respond to the Complaint and Merits Discovery
11 (id. at 12). Defendant intends to remove this action once it obtains more information about Plaintiff's
12 citizenship. Once removed, Defendant intends to move to transfer the case to the United States District
13 Court, Southern District of New York, where it should have been filed in the first place. If the diversity
14 discovery indicates that removal is not possible, Defendant will move in this Court to dismiss the case
15 on the ground of inconvenient forum based on the mandatory and enforceable forum selection clause in
16 the parties' contract. Civ. Proc. Code § 410.30(a). Therefore, Plaintiff's Merits Discovery is premature
17 whether this case remains in state court or is removed to federal court.

18 There have been no prior requests for an extension of time to respond to the Complaint in this
19 action (id. at ¶ 13).

20 The undersigned counsel has advised counsel for Plaintiff that such an *ex parte* request will be
21 made to this Court (id. at ¶ 11, Ex. C).

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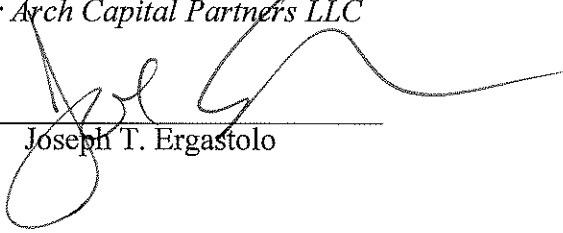
28 ///

1 Accordingly, Defendant respectfully submits that good cause exists, under California Rules of
2 Court rule 3.1202(c), for an order extending time for Defendant to respond to Plaintiff's Complaint from
3 December 23, 2019, until January 7, 2020, and extending time for Defendant to respond to Plaintiff's
4 Merits Discovery from December 20, 2019, until January 21, 2020.

5
6 Date: December 16, 2019

WRIGHT, L'ESTRANGE & ERGASTOLO

*Attorneys for Defendant
Silver Arch Capital Partners LLC*

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9 By: 
10 Joseph T. Ergastolo
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DECLARATION OF JOSEPH T. ERGASTOLO

I, Joseph T. Ergastolo, declare:

1. I am an attorney at law licensed to practice before this Court and am a partner in the law firm of Wright, L'Estrange & Ergastolo, counsel for Defendant Silver Arch Capital Partners LLC ("Defendant") in the above-entitled matter. The facts contained within this declaration are true of my own knowledge and are such that I could, and would if called upon to do so, competently testify thereto.

2. Plaintiff McKinney Capital & Advisory, LLC ("Plaintiff") filed the Complaint in state court on or about October 4, 2019 (Register of Action "ROA" # 1). Defendant was served with the Summons and Complaint on or about October 21, 2019.

3. The contract that is the basis of Plaintiff's Complaint contains choice-of-law and venue provisions for New York (ROA # 1, Ex. A at p. 3).

4. On or about November 20, 2019, Defendant timely filed a Notice of Removal of Action to Federal Court (ROA # 15).

5. On or about November 21, 2019, Judge M. James Lorenz of the United States District Court for the Southern District of California issued an order remanding the action to state court. The remand Order states that Defendant failed to establish complete diversity because the removal petition did not indicate the citizenship of each of the members of Plaintiff and Defendant, both limited liability companies. A copy of the Order is attached hereto as Exhibit A.

6. On or about November 25, 2019, I contacted counsel for Plaintiff, Craig W. DuFord, asking him to identify each of Plaintiff's member's state of citizenship. Mr. DuFord declined to provide the information.

7. Later that day, on or about November 25, 2019, Defendant propounded two (2) special interrogatories on Plaintiff for the limited purpose of determining whether diversity jurisdiction existed for purposes of removal. To that extent, Defendant's special interrogatories asked Plaintiff to identify all of its members and those members' state of citizenship. Plaintiff's responses to the two (2) special interrogatories are due on December 26, 2019.

8. On or about November 14, 2019, Plaintiff served on Defendant form interrogatories, special interrogatories, requests for production of documents, and requests for admissions (collectively,

1 “Merits Discovery”). The merits discovery requests information pertaining to substantive issues in the
2 lawsuit.

3 9. On or about December 3, 2019, Plaintiff filed a request for entry of default against
4 Defendant (ROA # 19). The request was rejected (ROA # 21).

5 10. After I received service of Plaintiff’s request for entry of default, I contacted counsel for
6 Plaintiff, and asked him to not refile the default request, explaining that it was premature. I also asked
7 him to agree to a fifteen (15) day extension of time for Defendant to respond to the Complaint and for a
8 thirty (30) day extension of time for Defendant to respond to the Merits Discovery. Mr. DuFord
9 informed me that he would not agree to an extension. I followed up my conversation with an e-mail, a
10 copy of which is attached hereto as Exhibit B.

11 11. At 10:14 a.m. on December 12, 2019, I sent an e-mail to Mr. DuFord and advised him
12 that I intended to file this *ex parte* application requesting a fifteen (15) day extension to respond to the
13 Complaint and a thirty (30) day extension to respond to the Merits Discovery. A copy of this e-mail is
14 attached hereto as Exhibit C.

15 12. Good cause exists for an extension of time to respond to the Complaint and Merits
16 Discovery. Defendant’s two (2) special interrogatories are outstanding and Plaintiff’s responses to those
17 special interrogatories will dictate whether this case is removable. Defendant should not have to file its
18 response in state court or respond to the Merits Discovery until the removability issue is decided.
19 Moreover, the Merits Discovery is premature whether this case is in state or federal court, because in
20 either court, Defendant will move (either through a transfer motion in federal court or a motion to
21 dismiss in state court) to have the case sent to New York, where the parties’ contract requires it be heard.
22 The situs should be decided prior to the Merits Discovery so that the correct situs law can be applied to
23 any discovery issues. Defendant therefore requests additional time to so that it can further investigate
24 the issue of diversity jurisdiction and removal before addressing the substantive issues that might be
25 mooted.

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MCKINNEY CAPITAL & ADVISORY
GROUP, LLC,

Plaintiff,

v.

SILVER ARCH CAPITAL PARTNERS
LLC,

Defendant.

Case No.: 19cv2203-L-LL

**ORDER REMANDING ACTION TO
STATE COURT**

Defendant removed this breach of contract and fraud action from State court pursuant to 28 U.S.C. §§1332 and 1441. For the reasons stated below, the action is remanded.

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution or statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Consistent with the limited jurisdiction of federal courts, the removal statute is strictly construed against removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of

//////

1 establishing removal jurisdiction is on the removing party. *See Abrego Abrego v. The*
2 *Dow Chem. Co.*, 443 F.3d 676, 682-85 (9th Cir. 2006).

3 "[A]ny civil action brought in a State court of which the district courts of the
4 United States have original jurisdiction, may be removed" 28 U.S.C. § 1441(a).
5 Defendants' notice of removal is based on 28 U.S.C. §1332. Under section 1332(a),
6 original jurisdiction exists in cases where the amount in controversy exceeds \$75,000 and
7 the case is "between citizens of different states." To meet the requirement of diversity of
8 citizenship, Defendant must show "complete diversity of citizenship." *Caterpillar, Inc. v.*
9 *Lewis*, 519 U.S. 61, 68 (1996). This requirement is met when "the citizenship of each
10 plaintiff is diverse from the citizenship of each defendant." *Id.*

11 The removing party is required to allege diversity, which includes "alleg[ing]
12 affirmatively the actual citizenship of the relevant parties." *Kanter v. Warner-Lambert*,
13 265 F.3d 853, 857 (9th Cir. 2001). According to the underlying complaint, Plaintiff and
14 Defendant are limited liability companies. (Doc. no. 1 at 8.)¹ The citizenship of a limited
15 liability company for purposes of diversity jurisdiction is determined by examining the
16 citizenship of each of its members. *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-96
17 (1990); *Johnson v. Columbia Properties Anchorage, L.P.*, 437 F.3d 894, 899 (9th
18 Cir.2006). Defendant alleges that "[n]one of the members of Defendant are citizens of
19 the State of California," and that "none of the members of Plaintiff are citizens of the
20 State of New Jersey." (Doc. no. 1 at 3.) These allegations are insufficient to conclude
21 that none of Plaintiff's members is a citizen of the same state as any of Defendant's
22 members. Accordingly, Defendant has not met its burden to affirmatively allege the
23 citizenship of all parties. The notice of removal fails to establish federal jurisdiction.

24 "If at any time before final judgment it appears that the district court lacks subject
25 matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). This action is
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28 ¹ Page numbers are assigned by the ECF system.

1 therefore remanded to the Superior Court of the State of California for the County of San
2 Diego.

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4 **IT IS SO ORDERED.**

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6 Dated: November 21, 2019


7 
8 Hon. M. James Lorenz
9 United States District Judge
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EXHIBIT B

Joe Ergastolo

From: Joe Ergastolo
Sent: Tuesday, December 10, 2019 9:19 AM
To: Craig DuFord
Cc: Sarah Kern
Subject: McKinney and Silver Arch

Hi Craig:

During our call yesterday you requested that I send you an email with my requests.

Default

The request for entry of default your office filed on December 3, 2019 (since rejected by the court) should not have been filed because the deadline for Silver Arch to respond to the complaint is, at the earliest, December 20, 2019. Cal. Code Civ. Proc. Section 430.90. Silver Arch requests that plaintiff not refile the request for dismissal.

Forum Selection Clause

The term sheet executed by the parties contains a forum selection clause requiring the parties to bring any claim in any state or federal court sitting in the State of New York and such venue is "to the exclusion of the courts in any other state or country." The forum selection clause is enforceable. Atl. Marine Constr. Co. v. United States Dist. Court, 571 U.S. 49, 64 (2013); Fireman's Fund Ins. Co. v. Cho Yang Shipping Co., 131 F.3d 1336, 1338 (9th Cir. 1997); Smith, Valentino & Smith, Inc. v. Superior Court of L.A. Cnty., 17 Cal.3d 491, 494 (1976).

Silver Arch requests that McKinney dismiss the pending San Diego Superior Court proceeding and re-file the matter in the appropriate forum in the State of New York.

If McKinney declines to dismiss the pending proceeding, Silver Arch will move to dismiss McKinney's lawsuit for forum non conveniens, pursuant to Civil Procedure Code section 418.10(a), based on the mandatory forum selection clause, assuming the lawsuit remains in Superior Court. If the lawsuit is removed to federal court, Silver Arch will move to dismiss the action for improper venue, or transfer the case to the Southern District of New York. 28 U.S.C. section 1406(a).

Extension Requests

There are two pending deadlines that Silver Arch requests be moved. First, McKinney mail served form interrogatories, requests for admissions, special interrogatories, and request for production of documents ("Merits Discovery"), on November 14, 2019. Absent extension, the responses to the Merits Discovery are due on or before December 19, 2019. Second, absent an extension, Silver Arch's deadline to respond to McKinney's complaint is at the earliest December 20, 2019, 30 days after the Superior Court receives the case on remand.

For the reason below, Silver Arch requests a 15 day extension to respond to plaintiff's complaint and a 30 day extension to respond to McKinney's Merits Discovery.

On November 25, 2019, Silver Arch personally served on your office written discovery (2 questions) seeking information regarding McKinney's members. That information is necessary to determine whether there is complete diversity. Silver Arch will remove the case to federal court if the discovery indicates complete diversity exists.

It makes sense that the parties know where this case is going to be tried, before taking into any Merits Discovery. Thus, it makes sense for Silver Arch to receive and review the diversity discovery responses prior to having to answer the Merits Discovery or file a response in state court.

Please let me know by 5:00 p.m. on December 11, 2019, if you agree to extend the complaint response deadline by 15 days (to January 6, 2020) and the Merits Discovery response deadline 30 days (to January 17, 2020).

Please let me know if you have any questions.

Joe

Joseph T. Ergastolo
Wright, L'Estrange & Ergastolo
402 West Broadway, Suite 1800
San Diego, CA 92101
Office: (619) 231-4844
Direct: (619) 702-8202
Fax: (619) 231-6710
Email: jte@wlelaw.com

EXHIBIT C

Joe Ergastolo

From: Joe Ergastolo
Sent: Thursday, December 12, 2019 10:14 AM
To: Craig DuFord
Cc: Sarah Kern
Subject: RE: McKinney and Silver Arch

Hi Craig,

I have not received a response to my email below.

This email is to provide notice that Silver Arch will be appearing ex parte at 8:30 am on Tuesday December 17, 2019 in Department 66 of the Superior Court to request a 15 day extension of time to respond to plaintiff's complaint and a 30 day extension of time to respond to plaintiff's merits discovery, as defined in my email below.

Please let me know if you have any questions.

Joe

Joseph T. Ergastolo
Wright, L'Estrange & Ergastolo
402 West Broadway, Suite 1800
San Diego, CA 92101
Office: (619) 231-4844
Direct: (619) 702-8202
Fax: (619) 231-6710
Email: jte@wlelaw.com

From: Joe Ergastolo
Sent: Tuesday, December 10, 2019 9:19 AM
To: Craig DuFord <craig@dufordlaw.com>
Cc: Sarah Kern <skern@dufordlaw.com>
Subject: McKinney and Silver Arch

Hi Craig:

During our call yesterday you requested that I send you an email with my requests.

Default

The request for entry of default your office filed on December 3, 2019 (since rejected by the court) should not have been filed because the deadline for Silver Arch to respond to the complaint is, at the earliest, December 20, 2019. Cal. Code Civ. Proc. Section 430.90. Silver Arch requests that plaintiff not refile the request for dismissal.

Forum Selection Clause

The term sheet executed by the parties contains a forum selection clause requiring the parties to bring any claim in any state or federal court sitting in the State of New York and such venue is "to the exclusion of the courts in any other state or country." The forum selection clause is enforceable. Atl. Marine Constr. Co. v. United States Dist. Court, 571 U.S. 49, 64 (2013); Fireman's Fund Ins. Co.

v. Cho Yang Shipping Co., 131 F.3d 1336, 1338 (9th Cir. 1997); Smith, Valentino & Smith, Inc. v. Superior Court of L.A. Cnty., 17 Cal.3d 491, 494 (1976).

Silver Arch requests that McKinney dismiss the pending San Diego Superior Court proceeding and re-file the matter in the appropriate forum in the State of New York.

If McKinney declines to dismiss the pending proceeding, Silver Arch will move to dismiss McKinney's lawsuit for forum non conveniens, pursuant to Civil Procedure Code section 418.10(a), based on the mandatory forum selection clause, assuming the lawsuit remains in Superior Court. If the lawsuit is removed to federal court, Silver Arch will move to dismiss the action for improper venue, or transfer the case to the Southern District of New York. 28 U.S.C. section 1406(a).

Extension Requests

There are two pending deadlines that Silver Arch requests be moved. First, McKinney mail served form interrogatories, requests for admissions, special interrogatories, and request for production of documents ("Merits Discovery"), on November 14, 2019. Absent extension, the responses to the Merits Discovery are due on or before December 19, 2019. Second, absent an extension, Silver Arch's deadline to respond to McKinney's complaint is at the earliest December 20, 2019, 30 days after the Superior Court receives the case on remand.

For the reason below, Silver Arch requests a 15 day extension to respond to plaintiff's complaint and a 30 day extension to respond to McKinney's Merits Discovery.

On November 25, 2019, Silver Arch personally served on your office written discovery (2 questions) seeking information regarding McKinney's members. That information is necessary to determine whether there is complete diversity. Silver Arch will remove the case to federal court if the discovery indicates complete diversity exists.

It makes sense that the parties know where this case is going to be tried, before taking into any Merits Discovery. Thus, it makes sense for Silver Arch to receive and review the diversity discovery responses prior to having to answer the Merits Discovery or file a response in state court.

Please let me know by 5:00 p.m. on December 11, 2019, if you agree to extend the complaint response deadline by 15 days (to January 6, 2020) and the Merits Discovery response deadline 30 days (to January 17, 2020).

Please let me know if you have any questions.

Joe

Joseph T. Ergastolo
Wright, L'Estrange & Ergastolo
402 West Broadway, Suite 1800
San Diego, CA 92101
Office: (619) 231-4844
Direct: (619) 702-8202
Fax: (619) 231-6710
Email: jte@wlelaw.com

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

12/16/2019 at 09:12:53 AM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

Plaintiff,

v.

SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

**[PROPOSED] ORDER GRANTING
DEFENDANT'S *EX PARTE* APPLICATION TO
EXTEND TIME TO RESPOND TO
PLAINTIFF'S COMPLAINT AND MERITS
DISCOVERY**

GOOD CAUSE APPEARING, Defendant Silver Arch Capital Partners LLC's request for: (1) a fifteen (15) day extension to respond to Plaintiff McKinney Capital & Advisory, LLC's complaint; and (2) a thirty (30) day extension to respond to Plaintiff's merits discovery, is hereby granted.

Defendant's response to the complaint is due on January 7, 2020.

Defendant's responses to Plaintiff's merits discovery is due on January 20, 2020.

IT IS ORDERED.

Dated: _____

HONORABLE KENNETH J. MEDEL

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1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

12 Plaintiff,
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14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,
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17 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/16/2019 at 09:12:00 AM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Case No.: 37-2019-00052881-CU-FR-CTL

PROOF OF SERVICE

1 I am a resident of the State of California over the age of 18 years, and not a party to the within
2 action. My business address is 402 West Broadway, Suite 1800, San Diego, CA 92101. On
3 **December 16, 2019**, I served the within documents:

4 **DEFENDANT'S *EX PARTE* APPLICATION TO EXTEND TIME TO RESPOND TO**
5 **PLAINTIFF'S COMPLAINT AND MERITS DISCOVERY; DECLARATION OF**
6 **JOSEPH T. ERGASTOLO IN SUPPORT THEREOF**


7 **[PROPOSED] ORDER GRANTING DEFENDANT'S *EX PARTE* APPLICATION TO**
8 **EXTEND TIME TO RESPOND TO PLAINTIFF'S COMPLAINT AND MERITS**
9 **DISCOVERY**

10 _____ U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee
11 named herein for collection and first class mailing on the below indicated date. I am readily familiar
12 with Wright, L'Estrange & Ergastolo's practices for collection and processing of correspondence for
13 mailing with the United States Postal Service.

14 XX I caused the above-named documents to be served by hand-delivery (via Advanced Attorney
15 Service) on:

17 DUFORD LAW, LLP Craig W. Duford, State Bar No. 305823 18 Julia S. Zold, State Bar No. 324847 3611 Fifth Ave. 19 San Diego, CA 92103 Ph: (619) 546-4291 20 Fax: (619) 354-2449	Attorneys for Plaintiff
--	-------------------------

21 Executed **December 16, 2019**, at San Diego, California. I declare under penalty of perjury under
22 the laws of the State of California that the foregoing is true and correct.

23
24 
25 Tina R. Rynberg
26
27
28

FILED
Clerk of the Superior Court
Clerk of the Superior Court
DEC 17 2019
DEC 17 2019

By: G. Mendoza, Clerk
By: G. Mendoza, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

Plaintiff,

v.

SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

**[PROPOSED] ORDER GRANTING
DEFENDANT'S *EX PARTE* APPLICATION TO
EXTEND TIME TO RESPOND TO
PLAINTIFF'S COMPLAINT AND MERITS
DISCOVERY**

GOOD CAUSE APPEARING, Defendant Silver Arch Capital Partners LLC's request for: (1) a fifteen (15) day extension to respond to Plaintiff McKinney Capital & Advisory, LLC's complaint; and (2) a thirty (30) day extension to respond to Plaintiff's merits discovery, is hereby granted.

Defendant's response to the complaint is due on January 7, 2020.

Defendant's responses to Plaintiff's merits discovery is due on January 20, 2020.

IT IS ORDERED.

Dated: DEC 17 2019

Kenneth J. Medel

HONORABLE KENNETH J. MEDEL

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
7 *Silver Arch Capital Partners LLC*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/23/2019 at 02:43:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
12 LLC, a California limited liability company,

13 Plaintiff,

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
16 LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

17 Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

NOTICE OF ENTRY OF ORDER

Judge: The Honorable Kenneth J. Medel
Dept: C-66

18 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on December 17, 2019, at 8:30 a.m. in Department C-66 of the
20 above-entitled Court, located at 330 West Broadway, San Diego, California 92101, the Court entered
21 an order granting Defendant Silver Arch Capital Partners, LLC's *ex parte* application to extend time
22 to respond to Plaintiff McKinney Capital & Advisory, LLC's Complaint and merits discovery in the
23 above-captioned action. A true and correct copy of the Order is attached hereto as Exhibit A.

25 WRIGHT, L'ESTRANGE & ERGASTOLO

26 *Attorneys for Defendant*
27 *Silver Arch Capital Partners LLC*

28 Date: December 17, 2019

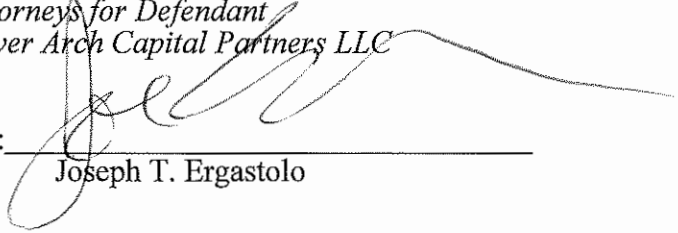
By: 
Joseph T. Ergastolo

EXHIBIT A

FILED
Clerk of the Superior Court
Clerk of the Superior Court
DEC 17 2019
DEC 17 2019

By: G. Mendoza, Clerk
By: G. Mendoza, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

Plaintiff,

v.

SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2019-00052881-CU-FR-CTL

**~~[PROPOSED]~~ ORDER GRANTING
DEFENDANT'S *EX PARTE* APPLICATION TO
EXTEND TIME TO RESPOND TO
PLAINTIFF'S COMPLAINT AND MERITS
DISCOVERY**

GOOD CAUSE APPEARING, Defendant Silver Arch Capital Partners LLC's request for: (1) a fifteen (15) day extension to respond to Plaintiff McKinney Capital & Advisory, LLC's complaint; and (2) a thirty (30) day extension to respond to Plaintiff's merits discovery, is hereby granted.

Defendant's response to the complaint is due on January 7, 2020.

Defendant's responses to Plaintiff's merits discovery is due on January 20, 2020.

IT IS ORDERED.

Dated: DEC 17 2019

Kenneth J. Medel

HONORABLE KENNETH J. MEDEL

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
402 West Broadway, Suite 1800
4 San Diego, California 92101
(619) 231-4844
5 (619) 231-6710 (Facsimile)

6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
12 LLC, a California limited liability company,

13 Plaintiff,
14

15 v.
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17 SILVER ARCH CAPITAL PARTNERS,
18 LLC, a New Jersey limited liability company;
19 and DOES 1 through 50, inclusive,
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21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/23/2019 at 02:43:00 PM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

1 I am a resident of the State of California over the age of 18 years, and not a party to the within
2 action. My business address is 402 West Broadway, Suite 1800, San Diego, CA 92101. On
3 **December 23, 2019**, I served the within documents:

4 **NOTICE OF ENTRY OF ORDER**

5 XX U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee
6 named herein for collection and first class mailing on the below indicated date. I am readily familiar
7 with Wright, L'Estrange & Ergastolo's practices for collection and processing of correspondence for
8 mailing with the United States Postal Service.

9 X By transmitting the document via Notice of Electronic Filing through CM/ECF (One
10 Legal) on the date of this certificate to those persons as indicated below.

DUFORD LAW, LLP Craig W. Duford, State Bar No. 305823 Julia S. Zold, State Bar No. 324847 3611 Fifth Ave. San Diego, CA 92103 Ph: (619) 546-4291 Fax: (619) 354-2449	Attorneys for Plaintiff
--	-------------------------

16 Executed **December 23, 2019**, at San Diego, California. I declare under penalty of perjury under
17 the laws of the State of California that the foregoing is true and correct.

19 
20 Tina R. Rynberg

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Craig DuFord, SBN 305823 / Julia Zold SBN 324847 DuFord Law, LLP 3611 Fifth Avenue San Diego, CA 92103 TELEPHONE NO: (619) 546-4291 FAX NO (Optional): 619) 354-2449 E-MAIL ADDRESS (Optional): Craig@Dufordlaw.com ATTORNEY FOR (Name): McKinney Capital and Advisory Group LLC	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division - Civil	
PLAINTIFF/PETITIONER: McKinney Capital and Advisory Group LLC	CASE NUMBER: 37-2019-00052881-CU-FR-CTL
DEFENDANT/RESPONDENT: Silver Arch Capital Partners LLC, et al.	JUDICIAL OFFICER: Kenneth J Medel
NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION	DEPT: C-66

1. Please take notice that, as of (date): 1/1/2020

- ☐ the following self-represented party or
- ☒ the attorney for:
- a. ☒ plaintiff (name): McKinney Capital and Advisory Group LLC
 - b. ☐ defendant (name):
 - c. ☐ petitioner (name):
 - d. ☐ respondent (name):
 - e. ☐ other (describe):

has changed his or her address for service of notices and documents or other contact information in the above-captioned action.

☐ A list of additional parties represented is provided in Attachment 1.

2. The new address or other contact information for (name): Craig DuFord

is as follows:

- a. Street: 2131 Third Ave
- b. City: San Diego
- c. Mailing address (if different from above):
- d. State and zip code: CA, 92101
- e. Telephone number: 6195464291
- f. Fax number (if available): 619) 354-2449
- g. E-mail address (if available): craig@dufordlaw.com

3. All notices and documents regarding the action should be sent to the above address.

Date: 12/30/2019

Craig DuFord

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

PLAINTIFF/PETITIONER: McKinney Capital and Advisory Group LLC	CASE NUMBER: 37-2019-00052881-CU-FR-CTL
DEFENDANT/RESPONDENT: Silver Arch Capital Partners LLC, et al.	

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF CHANGE OF ADDRESS OR OTHER CONTACT INFORMATION

(NOTE: This page may be used for proof of service by first-class mail of the Notice of Change of Address or Other Contact Information. Please use a different proof of service, such as Proof of Service—Civil (form POS-040), if you serve this notice by a method other than first class-mail, such as by fax or electronic service. You cannot serve the Notice of Change of Address or Other Contact Information if you are a party in the action. The person who served the notice must complete this proof of service.)

1. At the time of service, I was at least 18 years old and not a party to this action.
2. I am a resident of or employed in the county where the mailing took place. My residence or business address is (specify):
2131 Third Ave, San Diego, CA 92101
3. I served a copy of the *Notice of Change of Address or Other Contact Information* by enclosing it in a sealed envelope addressed to the persons at the addresses listed in item 5 and (check one):
 - a. ☒ deposited the sealed envelope with the United States Postal Service with postage fully prepaid.
 - b. ☐ placed the sealed envelope for collection and for mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. The *Notice of Change of Address or Other Contact Information* was placed in the mail:
 - a. on (date): 12/30/2019
 - b. at (city and state): San Diego, CA 92103
5. The envelope was addressed and mailed as follows:

a. Name of person served: JOSEPH ERGASTOLO Street address: 402 W Broadway 1800 City: SAN DIEGO State and zip code: CA 92101	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code: 	d. Name of person served: Street address: City: State and zip code:

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/30/2019

Esther Hernandez

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)



EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MCKINNEY CAPITAL AND ADVISORY LLC,
a California limited liability company,

Civil Action No.

Plaintiff

v.

SILVER ARCH CAPITAL PARTNERS LLC
a New Jersey limited liability company, and
Does 1-50, inclusive,

Removed from:
Superior Court of California
County of San Diego-Central Division
Case No 37-2019-00052881

Defendants

AFFIDAVIT OF JEFFREY WOLFER

State of New Jersey)

ss:

County of Bergen)

Jeffrey Wolfer, being duly sworn, deposes and says:

1. I am the Managing Member and Chief Executive Officer of Defendant Silver Arch Capital Partners, LLC. ("SACP"). I offer this affidavit to identify the citizenship of each of the members of SACP.

2. The sole members of SACP are Jeffrey Wolfer and Stephanie Wolfer. Stephanie and I both are citizens of the State of New Jersey and maintain our residence in Alpine, New Jersey. We do not maintain any residence in the State of California or any other jurisdiction.

Jeffrey Wolfer

Sworn to before me this
26th day of November 2019

Mary Ellen Phelan
Notary Public

MARY ELLEN PHELAN
A Notary Public of New Jersey
My Commission Expires 12/09/2021

EXHIBIT C

1 KELLY E. DUFORD, State Bar No. 295646
2 *craig@dufordlaw.com*
3 RIO F. SCHWARTING, State Bar No. 323363
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6 3611 Fifth Ave
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Ph:(619) 546-4291
Fax:(619) 354-2449

7 Attorneys for Plaintiff
8 MCKINNEY CAPITAL & ADVISORY, LLC.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

12 MCKINNEY CAPITAL & ADVISORY,
13 LLC., a California limited liability
company,

14 Plaintiff,

15 vs.

16 SILVER ARCH CAPITAL PARTNERS,
17 LLC., a New Jersey limited liability
company; and does 1-50, inclusive,

18
19 Defendants.

Case No. 37-2019-00052881-CL-FR-CTL

**PLAINTIFF MCKINNEY CAPITAL &
ADVISORY, LLC FIRST AMENDED
RESPONSES TO DEFENDANT SILVER
ARCH CAPITAL PARTNERS, LLC's
REQUESTS FOR SPECIAL
INTERROGATORIES, (SET ONE)**

20 PROPOUNDING PARTY: SILVER ARCH CAPITAL PARTNERS, LLC.

21 RESPONDING PARTY: MCKINNEY CAPITAL & ADVISORY, LLC.

22 SET NUMBER: ONE

23 Responding party, Plaintiff MCKINNEY CAPITAL & ADVISORY, LLC. ("Plaintiff"),
24 in the above case, makes the following amended response to Defendant SILVER ARCH
25 CAPITAL PARTNERS, LLC. ("Defendant"), FIRST set of specially prepared interrogatories.

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1 CITIZENSHIP ("IDENTIFY THAT MEMBER 'S STATE OF CITIZENSHIP" means: (1) for a
2 member that is a natural person, that natural person's (i) country of citizenship and (ii) state of
3 domicile; (2) for a member that is a corporation (i) the state or foreign country in which it is
4 incorporated and (ii) the state or foreign country where it has its principal place of business; and
5 (3) for a member that is a noncorporate business entity, each member of the noncorporate
6 business entity 's (i) country of citizenship and (ii) state of domicile) as of October 4, 2019.

7 **RESPONSE:**

8 Responding Party objects to this request on the grounds it compound. Objection,
9 information is in the possession of Propounding Party, others affiliated with Propounding Party,
10 and is easily accessible. Without waiving said objections Responding Party answers as follows:

11 Damian McKinney, California, United States of America.

12 Responding Party reserves the right to supplement, modify and/ or change this response
13 up to and including the time of trial.

14
15 DATED: January 03, 2019

DUFORD LAW, LLP

16
17 By: 

18 KELLY E. DUFORD
19 RIO F. SCHWARTING
20 Attorneys for Plaintiff
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VERIFICATION

MCKINNEY CAPITAL & ADVISORY GROUP, LLC V. SILVER ARCH CAPITAL
PARTNERS, LLC; AND DOES 1-50.
37-2019-00052881-CL-FR-CTL

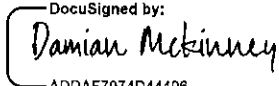
MCKINNEY CAPITAL & ADVISORY GROUP, LLC, declares as follows:

1. It is a Plaintiff in the above entitled action.

2. It has read its responses to Defendant's Requests for Special Interrogatories, Set

One. The matters stated therein are true to the best of my knowledge.

I declare under penalty of perjury under the laws of the state of California that the forgoing
is true and correct. Executed on this 2nd day of January 2020 in San Diego, California.

By: 
ADDAF7874D44498...
Damian McKinney, Member of McKinney Capital &
Advisory Group, LLC.

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Joseph T. Ergastolo
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San Diego, CA 92101
Office: (619) 231-4844
Direct: (619) 702-8202
Fax: (619) 231-6710
Email: jte@wlelaw.com

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

DATED this 3rd day of January 2020.

Joel Feldman

EXHIBIT D

1 WRIGHT, L'ESTRANGE & ERGASTOLO
Joseph T. Ergastolo (SBN 137807)
2 jte@wlelaw.com
Davin H. Kono (SBN 312382)
3 dkono@wlelaw.com
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6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
LLC, a California limited liability company,

12 Plaintiff,
13

14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,

16 Defendants.
17

Case No.: 37-2019-00052881-CU-FR-CTL

NOTICE OF FILING OF REMOVAL

Judge: The Honorable Kenneth J. Medel
Dept: C-66

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on January 7, 2020, Defendant Silver Arch Capital Partners LLC
4 filed a Notice of Removal, pursuant to 28 U.S.C. §§ 1332 and 1441 *et seq.*, in the above-captioned action
5 removing this action to the United States District Court for the Southern District of California.

6 PLEASE TAKE FURTHER NOTICE that Defendant, upon filing the Notice of Removal in the
7 office of the Clerk of the United States District Court for the Southern District of California, also filed
8 copies thereof with the Clerk of the Superior Court of the State of California, County of San Diego, to
9 effect removal pursuant to 28 U.S.C. § 1446.

10 A copy of the Notice of Removal is annexed hereto.

11
12 Date: January 7, 2020

WRIGHT, L'ESTRANGE & ERGASTOLO

13 *Attorneys for Defendant*
14 *Silver Arch Capital Partners LLC*

15 By: 
16 Joseph T. Ergastolo

1 WRIGHT, L'ESTRANGE & ERGASTOLO
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2 jte@wlelaw.com
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6 *Attorneys for Defendant*
Silver Arch Capital Partners LLC
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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT**

11 MCKINNEY CAPITAL & ADVISORY,
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14 v.

15 SILVER ARCH CAPITAL PARTNERS,
LLC, a New Jersey limited liability company;
and DOES 1 through 50, inclusive,
16

Defendants.
17

Case No.: 37-2019-00052881-CU-FR-CTL

PROOF OF SERVICE

1 I am a resident of the State of California over the age of 18 years, and not a party to the within
2 action. My business address is 402 West Broadway, Suite 1800, San Diego, CA 92101. On **January**
3 **7, 2020** I served the within documents:

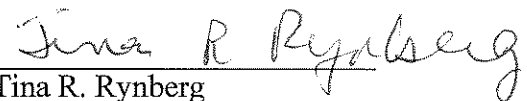
4 **NOTICE OF FILING OF REMOVAL**

5 XX U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee
6 named herein for collection and first class mailing on the below indicated date. I am readily familiar
7 with Wright, L'Estrange & Ergastolo's practices for collection and processing of correspondence for
8 mailing with the United States Postal Service.

9
10 DUFORD LAW, LLP
11 Craig W. Duford, State Bar No. 305823
12 Julia S. Zold, State Bar No. 324847
13 2131 Third Ave.
14 San Diego, CA 92101
15 Ph: (619) 546-4291
16 Fax: (619) 354-2449
17 craig@dufordlaw.com

*Attorneys for Plaintiff McKinney Capital &
Advisory Group, LLC*

18 Executed **January 7, 2020** at San Diego, California. I declare under penalty of perjury under the
19 laws of the State of California that the foregoing is true and correct.

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Tina R. Rynberg